THE

SCOTTISH CHURCH QUESTION.

BY THE

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PREFACE.

In offering the following pages to the public, the writer would preface them with only a few words.

The interest he takes in the important question, which he is about to examine, is a universal Protestant one. He considers that the relation between Church and State, which has arisen out of the Reformation in the various countries in which the Reformed Church is established, is still far from satisfying the claims which the Church of Christ on earth is bound by the Word of God to assert for her unfettered efficacy in providing for the spiritual welfare of the souls intrusted to her.

He considers these claims to be as widely different from those of the Church of Rome as the headship of Christ himself over his Catholic spiritual kingdom is different from that of his supposed Vicar on earth.

On this account they have, on the one hand, the higher authority and purer ends, and, on the other, they do not, if rightly understood, encroach upon the due powers and privileges which are given by God to the civil magistrate.

The events which have happened in the Scottish Church present, in the writer's opinion, most important and instructive objects of contemplation on this point to the Churchmen and Statesmen of Protestant Europe: and as he is desirous of doing his humble part to serve the common Protestant cause by spreading a knowledge of these events, to many of which he has been fortunate enough to be an eye-witness, the writer ventures to offer to the English

public this comprehensive and critical statement of the whole transaction.

He has not the presumption of deeming his judgment infallible, but rather the wish of assisting his kind reader to form his own conclusion, for which purpose he has endeavoured to omit no fact that has any important bearing on the subject.

Although he admits that many native writers have treated individual parts of this subject more powerfully than he will be able to do, he has thought a detailed representation of the whole matter was a want still to be supplied.

He begs to thank his Scottish friends on both sides of the question for the information which he has been favoured with, either in conversation or in pamphlets, and of which they will see that he has made ample use in the following pages.

This treatise was written in London, in the summer of last year (1843), and this will explain some passages referring to dates and numbers.

The quotations from different Acts of Parliament are taken from the folio edition, entitled "The Acts of the Parliaments of Scotland. Printed by command of His Majesty King George the Third, in pursuance of an Address of the House of Commons of Great Britain. 1814."

The writer has to conclude these prefatory words with the most ardent wish that the truth, justice, and power of the cause he pleads before the public may overcome all the deficiencies of its representation in a language that is not his own.

THE AUTHOR.

Potsdam, September 20, 1844.

INTRODUCTORY REMARKS.

It is not without feelings of considerable embarrassment and diffidence that the author of the present treatise ventures to offer his views on a subject which is, in his humble opinion, one of the most important ecclesiastical events that have occurred since the Reformation. Notwithstanding the opportunities of information which he has enjoyed, and the careful attention he has bestowed on the subject, he cannot help feeling overwhelmed by the weight of the intricate question he is about to examine.

Ever since the House of Lords finally confirmed the decision of the Supreme Civil Court of Scotland, in the first celebrated Auchterarder case, the Church question of that country has been assuming a new aspect. It has now long ceased to be a mere question of Church administration, as to the relations which patron, presentee, people, and Presbytery, ought to bear to each other in the appointment of a minister. As long as the question was merely this, its settlement would have been comparatively easy. But it is now no longer this alone. From a simple point of Church administration, its sphere has grown to a question of constitutional principles, the settlement of which cannot be hoped, even from the wisest and most gifted of the administrators of the law. The only tribunal before which the question could now be

peaceably solved, and the deep wounds healed that have been inflicted upon Scotland, is that of the enlightened legislator, the wise and high-minded Christian statesman.

The two great powers that God has placed over the affairs of men, the Church and State, each of which, in its own province, lays claim to the *whole* man, with all his faithful obedience and affection, have appeared at issue in the course of this struggle, with respect to the bounds of their respective provinces. The assumption of the State, that in all such disputes the ultimate decision rests, and must rest with itself, would probably receive an overwhelming recognition in all Protestant countries in which there exists an Established Church. Nor would this be received as more than an axiom among the generality of Protestant statesmen and lawyers. A Romanism exalted the Church as far above the State as the Divine is exalted above the human, so it has been supposed, that with regard to ecclesiastical polity, the peculiar effect of the Reformation has been to restore to the State its absolute supremacy "over all persons and in all causes." But in this it may be found that one form of falsehood has been exchanged for another, and that the latter evil is of no less magnitude than the former. Men, in general, are apt to make a virtue of necessity, and to assume that what exists *de facto*, ought also to exist *de jure;* and thus, because the supremacy both in Church and State is found united, in an ambiguous and indefinite manner, in the persons of Protestant princes, a similar ambiguity has been admitted into the theory of their union. This ambiguity is already beginning to work most fatally in many Protestant states, and recent experience, both in Germany and England, teaches us, that it is weakening Protestantism, and must weaken it, in proportion as it is cherished and fostered. It is the author's firm opinion, that the contradictious and conflicts of interest,

caused by the ambiguous definition of the limits of the two powers of Church and State, contain within themselves the elements of very unhappy future discord; and if he may be allowed to look forward into time, he would confidently predict that they will terminate in very serious collisions at no very distant period.

However this may be, in Scotland matters have stood, and do stand, in a position quite different from that in other Protestant countries: different, not as has been so frequently and unfairly objected, because of the wilful obstinacy of a Puritanical zealotism; not because of a crafty agitation striving to use, for foreign and selfish purposes, the deep love which every Scotchman entertains for his Church; nor because of the systematic operation of an ambitious and power-loving clergy; but different, because of statute laws and liberties of the Church, acknowledged by the State itself. Scotland is that spot on earth where Providence has introduced into history the germs of sound principles in the relations of Church and State, and the English Government has received from the hand of God, the honour and the conditions to give free action to these principles. The spirit of the Scotch Church which has come forth out of all its conflicts since the Reformation, one and the same, uncoerced and untrammelled, is no vague unknown thing against which the State has always suspiciously to be on its guard; on the contrary, it is plain and intelligible to every one acquainted with her history. There is nothing in this spirit that would prevent a Government from exercising all just and becoming authority, and the movement in the Scottish Church about the year 1834 was in reality not a movement against the State, but a movement within her own body. The re-aroused spirit of the Church was striving to defend her against the prejudicial effects of the so-called *Moderatism*

within her. The fact that fundamental questions, regarding the respective position of Church and State to each other, have since arisen, is owing to the misunderstanding and unjust suspicions of the civil authorities themselves. The Scotch Church has in her constitution a clearly defined position as regards the State, which she, as long as she will remain an Establishment, for her part would have no right to alter, and which, in fact, she did not feel tempted to alter in the year 1834, but on the other hand, she would scarcely allow the same to be altered by mere pressure from without. This spirit of the Scottish Church plainly put forth by her recognised standards, and again preserving these standards with watchful care and zeal, clear and effective in organization and discipline beyond anything the author has seen in other Protestant communions—penetrating into the inmost core of the national life and character—is that right of the Church which is recognised in the pages of history and legalised by statutory law. From the date of the union of both kingdoms up to the present time it had never been openly declared by the State that this spirit is inconsistent with the essential conditions of an Establishment, nor is this really the case if the matter be rightly understood. This declaration, however, having been once authoritatively pronounced, and the Legislature pertinaciously denying, or at least delaying, any measure of reconciliation, the Church of Scotland has been left no alternative but to determine whether she would give up herself or her established connexion with the State. The Church has, under existing circumstances, found herself compelled to adopt the latter course; freely and honourably she has restored to the State the benefactions she had received from it, as soon as she found that under the conditions enjoined on her she could no longer serve the State as an Establish-

ment, she has abandoned the advantages of a British Establishment for the protection of a British toleration; but before taking this step she has done all she could to avert it by *commissions*, *petitions*, *protests*, *declarations*, *appeals*, *claims of right*, *addresses*, *memorials*, *statements*, *remonstrances*, &c.; she has appealed from the Court of Session to the Upper House, from the decision of the Upper House to the Legislature; and at last, when she found no hearing, she has appealed to the last tribunal, above which stands only the everlasting holy Judge himself, —she has appealed to the conscience of the Church. Her course on the 18th of May of the present year (1843) was in execution of the bidding of this conscience, which she has obeyed, and, in doing so, has made heavy sacrifices. Scotland's people and Scotland's strength are with the Church of its ancestors and martyrs. The author does not pretend to be a prophet, but is content to await God's decision in the issue. He is content to leave the remaining portion of the Establishment to prove itself, by its spiritual efficacy, to the Church feeling of the Scottish people, to be the veritable Church of their ancestors; and if it can do this, by this very act to cite the Seceders as grievous sinners before the bar of history and their country.

If, however, the Free Protesting Church of Scotland should prove in reality to be the Church of the nation, and it is the author's decided opinion that she will do so; and if the present Establishment should prove to be merely the sediment remaining after the process of internal fermentation, then the Secessionists will appear the conscientious supporters of principles, the hostility to which posterity will never be able to comprehend, principles that determine the form of the future Protestant world, and of which the free and clear development in the national

life can, in the author's opinion, prove alike to Church and State the harbinger of health and peace.

Believing, as the author does, that this question of the Church of Scotland must extend, both on account of the principles involved in it, and through its inevitable consequences, beyond the limits of the present time and beyond the boundaries of Scotland, how should he feel other than diffident, when he considers the magnitude of the task he has undertaken? These principles, so simple in themselves, run in their consequences through a long series of intricate documents, cases of law, interpretations, events and actions, like the noble metal that is bound up with the mineral of ignoble worth. These principles are the hidden spiritual powers, to the clear comprehension of which even the leaders on both sides have only been brought by degrees. It seems, then, almost presumptuous in a stranger, necessarily less familiar than many native authors with Scotland's history, character, and law, to hope that he can clearly distinguish, and rightly decide in a matter respecting which the wisest on both sides differ. After having, however, as he humbly hopes, carefully completed the work of investigation, the author would beg to enounce a decided, though unpretending opinion; and if he has allowed himself to anticipate, in his previous remarks, the results of that investigation; if, after weighing right and wrong, as each may be found on the one side or on the other, he does not hesitate to declare himself decidedly on the side of the "Free Protesting Church of Scotland," he trusts that this will not be attributed to an obstinate partisanship, but to his desire honestly, freely, and openly to pronounce his opinions, in order that his kind reader may entertain no doubt of his intention and meaning.

It is by no means the magnitude and difficulty of the

subject alone that fills the author with apprehension, but also the form in which best to express his views. He wishes to be as brief as possible. Even in the domain of pure reasoning, it is no common art to exercise a brevity, compatible at the same time with the best comment on the matter on hand; the difficulty, however, is much increased when the decision is intertwined with innumerable intricacies of historical and legal facts. In such cases brevity too often takes the form of shallowness, assumption, and avoidance of the point in debate. The author begs once for all to declare, that he has at no moment forgotten his responsibility in weighing and criticising impartially the arguments of the question; and he trusts that he has never lost sight of the respect due to the noble and sincere men of both sides, and that, as far as the domain of reasoning and history extends, he feels too great a love for truth to shrink from the critical remarks of those who possess a greater discernment and knowledge of facts than he does.

If anything could tend to remove the author's diffidence in his ability of discussing a subject of this magnitude, it would be the fact that he is personally unconnected with the dispute. To him who stands in the cloud, neither the cloud as a whole, nor the variety of its illumination by the rays of the sun, are so visible as to him who directs his eyes to it from a point without it. *All party spirit stands* IN *the cloud*, and the stranger who is not necessarily dragged by his connexions into one or the other party, is on this account capable of a less contracted view. He must doubtless possess, over and above this independence of party, sufficient power of sight and faithfulness of will, calmly and earnestly to contemplate the subject of his observation. With regard to the former point, the author may justly feel ample room for diffidence. With regard to

the latter, he trusts he will be excused for concluding these introductory remarks with a few words on it.

As long as the author was in these kingdoms, he took the deepest interest in the Scottish Church question. He sided from the first with that party with whom he thought the right to reside, both rationally and spiritually; with the men of that side he has in spirit suffered and striven; but it was not until a few months ago* that he could come to a clear conviction as to whether or not they were *legally* and *formally* right. The whole matter appeared to him to be a deeply tragical act in the drama of history, wherein that higher power which presides over the destiny of our race, had permitted the noble harbinger of a better future to appear, and then in consequence of a comparatively small fault to succumb, because that future was forbidden to be anticipated. The author felt, that had he been a member of the Scottish Church, he should have been a decided Non-intrusionist; and yet found no difficulty in believing, at the same time, that had he had the honour of being a member of the British Government, he should probably have acted as the Ministers of the State have done. Since that time he has been forced to abandon this view of the matter, and ventures, in the following observations, to realize the position that, all things taken together, the Free Protesting Church of Scotland is legally as well as actually in the right.

* These words were written in July, 1843.

THE SCOTTISH CHURCH QUESTION

EXAMINED.

SECTION I.

THE PASSING OF THE VETO ACT CONSIDERED IN ITS CONNEXION WITH THE ECCLESIASTICAL STATE OF SCOTLAND AT THE TIME, AND WITH PRECEDING AND SUBSEQUENT EVENTS.

On the 18th of May, of this present year,* 500 of the most zealous and influential clergy of the Church of Scotland thought it their duty to separate themselves from the Establishment, relinquishing office and income, house and home. More than 600 congregations, either chiefly or unanimously; more than 2,000 ruling elders;† above 200 youthful and hopeful probationers cast in their lot with them, and were followed, if not by all, at least by most of the Scotch missionaries abroad. On that day the Church of Scotland suffered a rent, which, extending beyond Church matters, has disturbed the social family and even the political relations of the land, and still threatens to shake them to an extent which no human eye can foresee.

All this calamity may be traced to an apparently insignificant cause, the celebrated enactment passed by the

* 1843. † Lay office-bearers of the Scotch Church.

General Assembly in May, 1834, and made a standing law of the Church in May, 1835, generally called the Veto Act, or the Veto-law. This fateful Act is as follows:—

"*Edinburgh, May* 29, 1835.

"The General Assembly declare, that it is a fundamental law of their Church, *that no pastor shall be intruded on any congregation contrary to the will of the people;* and in order that this principle may be carried into full effect, the General Assembly, with the consent of a majority of the Presbyteries of this Church, do declare, enact and ordain, That it shall be an instruction to Presbyteries, that if, at the moderating in a call to a vacant pastoral charge, the major part of the male heads of families, members of the vacant congregation, and in full communion with the Church, shall disapprove of the person in whose favour the call is proposed to be moderated in, such disapproval shall be deemed sufficient ground for the Presbytery rejecting such person, and that he shall be rejected accordingly, and due notice thereof forthwith given to all concerned; but that, if the major part of the said heads of families shall not disapprove of such person to be their pastor, the Presbytery shall proceed with the settlement according to the rules of the Church:

"And farther declare, that no person shall be held to be entitled to disapprove as aforesaid, who shall refuse, if required, solemnly to declare in presence of the Presbytery, that he is actuated by no factious or malicious motive, but solely by a conscientious regard to the spiritual interests of himself or the congregation."

In the few lines of this enactment, reasonable as it seems, and unpregnant of any violent consequences, slumbered the

mighty storm which since that time has broken over the land and aroused the soundest sleepers.

It will be the author's first duty to give a brief outline of the causes which at that time called forth this document, not only to remove the imputation of unseasonableness and self-will so often cast upon it, but also to place in a clear point of view its connexion with preceding and subsequent events.

It may be necessary in the course of the inquiry to go back even as far as the time of the Reformation in Scotland, but at present it will suffice if the writer commences with the moment when England and Scotland entered into political union, and when that Church of Scotland, which the Crown and Government of Great Britain have now to deal with, received a fixed and conclusive form on the faith of solemn treaties.

It was in 1690, after many a bloody fight for those objects, which a Scotchman holds dearer than life, and of which the rights and liberties of the Church of his fathers are to him the highest, that prelacy and the supremacy of the State in spiritual matters were solemnly overthrown, and the *Presbyterian* Church, with all her doctrines, institutions, and privileges, as granted to her in the Revolution Settlement, was declared once more the Established Church of the realm. The Scotch nation, decidedly disinclined as it was to the pretendency of the Stuarts, and as decidedly favourable to the Protestant succession, consented to the negotiations for a political union with England, under this one preliminary condition, that every provision of such negotiations should leave its Church intact; nay more, that before anything else should be decided, the Church should be at once, and without any reserve, recognised as she then existed according to the provisions of the Revolution

Settlement. This recognition was made in the Act of Security, on the faith of which the two kingdoms were united in 1707 by the well-known Treaty of Union.

In the above-mentioned Revolution Settlement, *all patronage was once for all abolished.* It is well known to every reader of Scotch Church history, that out of all the parishes of Scotland, amounting to about a thousand, scarcely one-fourth part had really lawful patrons if they had been put to justify their title by the old maxim of the canonists—"Patronum faciunt dos, ædificatis, fundus."* The remaining three-fourths had been by violence or fraud conferred on patrons by the Scotch Crown, taken back again by Parliament, conferred anew by Crown and Parliament together; once more resumed by the victorious Church of the nation, until at length, in 1690, all patronage was lawfully abolished, and compensation made both to those whose right was founded on injustice, and those whose right rested on justice. The plantation of churches reverted to the Church herself in the following manner:—In a vacant parish the elders and heritors presented the candidate; the rest of the congregation approved of him: the Presbytery then examined, ordained, and inducted. The rights of all three parties, however, were *real*, not merely *apparent*, and without the agreement of all three no one could become a lawful minister of the parish.†

A remarkable result of this is, in the first place, that in the Church of Scotland all ministers are *stipendiaries*, and that a *benefice* in Scotland is quite another thing from a *living* in England. In Scotland the endowment of a

* A patron is constituted by endowing a church, building a Church, giving a site for it.

† This will be further considered when the author comes to investigate more nearly this document with relation to the rights of congregations.

pastoral office, guaranteed by the State, is necessarily connected with the actual duty in the person of the man whom the Church lawfully appoints as labourer in that place; and a non-resident minister is something unheard of.

And, in the second place, the Church of Scotland only ordains to duty in respect to a fixed spot, so that no one can be admitted to ordination without at the same time undertaking active duty in the Church. There are no "holy orders" of absolute and indelible character.

It is important to keep these considerations steadily in view during the following investigation, inasmuch as the oversight of them has proved a chief cause of the misunderstanding in England respecting the Scotch Church question.

It is a peculiar feature in the character of the Church of Scotland, that she has always looked on patronage with much mistrust and dislike. Contests respecting patronage have been mixed up with all her contests for existence; and all her secessions may, like the last, be referred ultimately to the same cause. The reformation in Scotland proceeded from within and from below, whereas in England it proceeded from without and from above. This has exercised no inconsiderable influence on the character of the two Churches; and thus since that time the Scotch have regarded the patron only as the instrument in the hand of a State, hostile to their Church for centuries, to aid it in re-introducing Romanism, or, what they consider nearly the same, Laudian Episcopalianism, and to assist it in destroying Presbyterianism, which they hold to be the only form of Church government conformable to the Scriptures. It may be that until recently these suspicions against lay-patronage had abated; it may be that the personal qualities and honourable conduct of the patrons had

mainly removed the antipathy to patronage; still the fact remained that most of the patrons were Episcopalians. Now, the more decided Episcopalian patrons are, the less sympathy can they have with their Presbyterian Churches; and if not decided, they stand necessarily in the equivocal position of indifferents to ecclesiastical matters, which furnishes little security for the due exercise of the right of patronage.

The Scotch think that the right of patronage should, at least, be connected with membership of their Church; and that a difference of belief in the patron should, *ipso facto*, do away with his right; as in England, even, the Sovereign holds his crown, and with it the right of nominating bishops, on condition of his being a member of the Church of England. At any rate, they think they are right in guarding their Church by all lawful means against any influence of patronage which might prove dangerous to her spiritual welfare.

The conception of Christianity entertained by the Scotch mind is that which has been called *Puritanism*, because its fundamental principle is to keep the Church *pure* from everything which is not expressly and directly founded on the Word of God.

Thus, the Scotch Church, in her peculiar Puritanical character, presents to us one of those vast developments of Christianity which, in the course of time, have manifested themselves in the shape of the various Churches of the different nations and ages. Such vast developments, we may be sure, come not by chance, nor by human sin, but according to the will of a ruling Providence, educating nations and individuals in pursuance of its own inscrutable design, and in respect to their peculiar religious capacities and wants. A higher view recognises, perhaps, in none of them the *perfect* stature which Christianity strives to attain.

That is to say, no individual Church on earth may presume to identify itself with *the Church* itself; yet, it must be acknowledged, that under these various forms alone Christianity pours out its fulness and its powers amongst our race ; and that, notwithstanding their shortcomings, (considered in the absolute,) the individual branches of the one Christian Church cannot but be relatively justified, and looked on as the means through which the different nations, individuals, and ages, have their participation in truth and salvation, and their communion with God.

In each of these various forms which Christianity assumes, certain peculiar fundamental principles stand prominent, which, like crystalizing powers, impart to all the constituent elements of a Church, such as doctrine, government, discipline, form of worship, etc., a peculiar character, and fix the precise nature of this particular Christian community. These organizing principles may be of different value, and, in consequence, the particular Churches may differ widely in comprehensiveness, extent, purity, power, and duration. But as long as these leading principles have life, so long the Church, built up on them, lives also; and *vice versa*, no Church has ever retained its vitality after having lost the spirit of her fundamental principles. Thus, by calling on a Church to surrender these principles, you call on her to commit suicide, which she has no more right to do than an individual. The destiny of mortality, indeed, must and will happen to her, as to every individual, but it must *happen*, it must not be her deed. And it happens not by human prudence or command, but by the agency of the Spirit and Word of God, causing her to undergo a reformation from within to quit a previous lower state for a purer life ; a more profound knowledge, and a more perfect organization in Gospel truth. In this way all the present Christian Churches of the earth

in time must and will perish; making room for higher evolutions of Christianity, whilst *the Church* perisheth not. But, I repeat, as long as a single peculiar fragment of the Church of Christ exists, so long will it cling to its characteristic and organizing principles: and so long as it clings to these, it cannot but exist. In these principles it has its individual existence, and the defence of these principles it justly considers as a strife for life and death.

In the matter, the writer is now endeavouring to explain the two leading principles at issue were those of Non-intrusion and Spiritual independence; and it would be impossible to prove, that the Church of Scotland has exhibited a misunderstanding of her own character, in identifying herself with these principles.

By the term Non-intrusion, the Church of Scotland means to express the principle, that a congregation, which is, so to speak, ecclesiastically unblameable, has a right to demand respect for its conscientious protest, through its proper representatives, against a candidate presented for the vacant pastorship over it, and that such presentee is not to be intruded upon it contrary to its will, even though the authorities of the Church be satisfied with the general qualifications of the candidate.

By the principle of Spiritual independence, the Church of Scotland means no vague arbitrariness, but simply this, that in spiritual matters her jurisdiction is free from all control of civil power, and especially that with regard to the appointment of her office-bearers, the final decision rests with herself.

Both these principles are essential to the view of the Church of Christ, which the Scotch mind considers as alone conformable to the Scriptures: and as the prominent feature of the Hussite's religious character was his enthusiasm for the cup, that of the Baptist's is his attachment to

adult baptism; that of the Anglo-Catholic is his reverence for the apostolic succession and powers of his bishops, and so forth; so the prominent feature of a Scotch Presbyterian is his zeal to maintain the House of Christ pure, and free from all things not directly founded on the scriptural Word. Therefore he says,—To the Church of the Scriptures how revolting would have been even the idea of overruling the conscience of a Christian flock by an enforced appointment of a pastor, or of submitting the rules, which Christ himself in his kingly authority has left to his Church, to the revisal and control of any earthly power.

The controversy at first turned around the first of the above-mentioned principles alone, afterwards the second was brought into the field; the author will therefore follow a similar order of subjects in this treatise.

In the Bible no mention is made of patrons at all. The inference from this drawn by the Scotch mind would be, that neither should there be patrons in the household of Christ. However, patrons had risen into existence, and since their existence did not appear absolutely incompatible with a pure Church, the Scotch Church did not offer an uncompromising resistance to their introduction by the State, although she never ceased to feel it a heavy grievance.

The doctrinal position of the Church of Scotland with respect to this matter is as follows.—

In the Bible the Lord's Church does not appear in any established relation to the State. She there holds the position of a private community, united on *Voluntary principles.* She is rather the persecuted of the State. But the Scotch Church takes the view, that according to God's ordinance, the Church and State ought not to have towards

each other the relation either of enmity or of indifference: that the State, as such, is destined to become a Christian State, or, as the Scotch would express it, that Christ, to whom "all things have been delivered of the Father," is not only King of saints, but also King of kings, and King of nations; and that it is the province and duty of the Church to Christianize the State. In pursuance of these principles, the Church of Scotland considers that the State, in its ruling capacity, is bound to establish the Church of Christ in its dominions, not from motives of human expediency, but by Divine appointment; and, on the other hand, that the Church of Christ is bound in conscience to take up the position of an establishment, if offered to her. However, when she thus leaves the condition of *Voluntaryism* for that of an establishment, she naturally has to incur certain conditions from the part of the State. These conditions, however, must be compatible with her character as the Church of Christ, and must leave her free in the performance of her spiritual duties and the fulfilment of the commission, which she has received from Christ, and not from the State.

She is obliged to put herself in Christian communication and co-operation with the State, but she is not allowed to do so under conditions, which would injure the spiritual rights of her children, even were she offered in return the most dazzling earthly advantages. Were she to do this, it would be treason to her Lord and his Word and Work; or, to use the Scotch term, she would deny the Headship of Christ. It would "dim" the kingly crown, which he alone wears in his kingdom, a kingdom which is not of this world, and which is contaminated by connexion with worldly motives and interests, or in short, the Church of Christ has not to surrender her spiritual independence either to force or to alluring inducements.

Patronage is one of the conditions, which a Church incurs on becoming an Establishment, not necessarily, as history shows, but usually.

It is a fact, that the Church of Scotland was rid of it in 1690, and breathed freely when released from a burden so uncongenial to her. There have always been those in the Church of Scotland, who have looked on patronage as a sinful, unchristian oppression, the endurance of which could scarcely be excused by necessity. And even the more moderate have considered it at least a grievance, only so long tolerable, as its pernicious influences might be neutralized.

Thus we may estimate the effect produced upon the Scottish mind, when scarcely five years after the Union took place, and in open violation of the Treaty of Union, patronage was forcibly restored in the Church by the State, in the celebrated Act of Queen Anne. The reasons for passing it, assigned in the Act itself, will be admitted by every candid reader to be a mere pretext. It is said, that all patrons had not yet received their due compensation. Well, then the respective debtors ought to have been made to pay it. But what had the remissness of the debtors to do with a disgraceful attack on the constitution of the Church? It is said, that there had arisen "heats and divisions" concerning the appointment of ministers in some congregations. There had been, indeed, some cases of this nature; for instance, in Lonmay, in 1709, where the Kirk Session and the congregation disputed for two years about the minister to be presented to the Presbytery, and the Presbytery was at last obliged to step in and settle the matter itself. Well, at any rate, it was settled by constitutional means, and it might have been settled earlier. However this may be, the State was not called upon, nor entitled to intermeddle as physician to the ailments of the

Church, especially as experience had taught, that its interference in ecclesiastical affairs always made things worse. A defence of the Act of Queen Anne is impossible, an apology for it difficult, and if ever history, in her right and duty of calling things by their right names, should pronounce on this transaction, she would not be too harsh were she to brand it as a breach of sacred treaties, and a gross offence against public honour and good faith.

The writer can readily understand, that the present British Government had good motives for preserving patronage. But as the Veto Act did not do away with patronage, but was merely intended by the Church to give a check to the unconscientious exercise of power by the Presbyteries with respect to patronage, the remembrance of the injustice, originally committed by the State, should have induced, in its recent dealings with the Church, an equity, which, had it been put in practice at the right time, would have settled the disputes between the two parties peaceably and speedily.

It is not necessary for the purposes of this investigation to enter fully into the history of that momentous intrigue of Bolingbroke against the Scotch Church. It was, as it were, to punish the fidelity of Scotland to the Protestant succession, that this blow was struck by Bolingbroke and the Jacobites amongst the Scotch nobility; a blow so much the worse, as many other steps, important at that time, had already been taken to the injury of the Presbyterian Establishment. However this may be, Bolingbroke has gained his point; it is a fact, that for 130 years patronage has been in Scotland the law of the land, and loyally has the Church respected it. The Veto Act was, with respect to patronage, a Conservative measure. Although in May, 1842, the General Assembly denounced patronage as a bitter grievance, and petitioned Her Majesty most humbly

to cause measures to be proposed which should once for all set aside this apple of discord, yet, in the spring of the year (1843), they declared, with reference to the letter of Sir James Graham, that the continuance of patronage in the Church was not, in the most remote degree, *the* point on which the Church felt herself called upon, and bound in conscience, to disunite herself from the State. But it must be leniently judged of, if, in proportion as life returned into the Church, she felt anew an ache in her wound, the old feeling of still unforgotten injustice being again aroused. It is written, "They that sow the wind, shall reap the whirlwind;" and thus the seed of injustice, sown 130 years since, is springing up to life and spreading disorder and confusion around.

No sooner did the Church of Scotland get tidings of the introduction of that baneful Act of Queen Anne in the Commons, than she sent to London three deputies, to prevent, if possible, its passing into a law. But in consequence of the difficulty of travelling at that time, and the haste with which the Government urged the Bill through the House, these deputies did not arrive till the Bill had reached the Lords. They immediately, as they had been commissioned, presented on behalf of the Church a solemn remonstrance, but in vain. The Bill received the Royal assent on May 22, 1712.

Against this act of violence the General Assembly at once protested. After the death of Queen Anne the Church of Scotland repeated her protest before George I. In 1717, they sent a deputation to London, to obtain, if possible, from Parliament the repeal of the Act of Queen Anne. The Petition of the deputation was read, but the discussion of it deferred for a month; but before that time had elapsed, Parliament was prorogued.

When, in 1735, in consequence of the restoration of

patronage, the first secession took place, the Church of Scotland represented her grievance in a Petition to George II.

In 1736, the General Assembly, seeing all its efforts to be unavailing, made a solemn declaration, in which it again pronounced its protest, together with the reasons on which it was founded; and made it a duty to itself, and all subsequent assemblies, to use all lawful means, on every suitable occasion, to obtain the repeal of the Act of Queen Anne. At the same time it ordered its Commission, once for all, "to make due application to the King and Parliament for redress of the grievance of patronage, in case a favourable opportunity for so doing should occur during the subsistence of their Commission." Like the incessant advice of the immortal Roman against Carthage, the protest of the Scotch Church against the Act of Queen Anne, formed, during forty-eight years (viz., till the year 1784), the concluding words of the annual instructions given to the Commission of the General Assembly.

At the same time, in order to neutralize the injurious effect of patronage, the Church, in 1736, declared her adherence to her ancient principle of Non-intrusion.

Notwithstanding this, secessions followed. The Church, under the sway of the Moderates, who either methodically* or involuntarily plunged her into apathy, at last desisted from her fruitless public remonstrances, like a thrown wrestler who ceases to struggle, not because he has yielded, but in order to gather new strength. In the year 1782, the Moderates thought the time had arrived when the Church might be induced to make a declaration renouncing the rights granted to the parishes in the appointment of ministers by the Act of 1690, and by this

* As was the case with Principal Robertson.

declaration abandon her legal grounds against the pernicious working of the Act of Queen Anne. But even in that dangerous moment, the feeling of right and of duty towards the Church and nation proved superior to all machinations, and Dr. F. M'Night saved the Church of Scotland in her Assembly, by inducing it again solemnly to declare the old right of the parishes in the appointment of their ministers, as "agreeable to the immemorial and constitutional practice of this Church," and as "to be continued."

In the beginning of the present century a new life awoke in the Church of Scotland, as in those of England and Germany. The Evangelicals, the opponents of the Moderates, grew stronger and stronger, till at length in 1834 they had a decided majority. The passing of the Veto Act in that year was no more than a new step, similar to all those which the remonstrating Church had never ceased to take since 1712, with this great difference, that it was not a protest, but a measure of settlement and reconciliation. The operation of this Act would have been, as an impartial consideration would show, and as the most able and respectable opponents of it (such as Dr. Cook) had begun to acknowledge, on the one hand, virtually to recognise patronage, and on the other, to allow the Act of Queen Anne, without an express repeal gradually to fall into oblivion, and thus to produce a state of things greatly to be desired by all parties. But unfortunately this intention of the Veto Act has been misconceived.

The Moderates and the Evangelicals.

The author begs now to make a short digression, in order to describe the two leading parties in the Scotch Church. Their difference is not in individual points of doctrine, but they exhibit within the pale of the same

Church a decided contrast in spirit, which more or less prominently characterizes all their views and proceedings. He will now attempt to discover the points, from which, abstractedly considered, this pervading difference of view may arise even in conscientious men. The first point seems to the author to be the two views which may be taken of the Church, which we may call *institutional* and *personal*. That is to say, the Church may be viewed on the one hand, as an authoritative spiritual *institution*, which rears, trains, and rules the individuals; on the other, as a congregation of faithful individuals or persons, through whose spiritual activity alone it is that that institution acquires its duration and forms of existence on earth, the Church is in herself inseparably both the source and the result of spiritual life. Both these views are true, but separated from each other become partial and injurious. History shows, that not only different Churches, but that different parties within the same Church are more or less inclined to one or the other of these views to the neglect of its opposite; and that these Churches and parties take their general character from the degree in which they approach one or the other extreme, so that any particular object becomes important or trivial to one or the other Church or party, in proportion as it is connected with one or the other of these views.

The character of the Scottish Church in this respect, appears to consist in the combination of both views, with a preponderance of the personal.

It would lead us away too far to explain here how this character manifests itself in her form of government, discipline, and worship, and how all her great virtues, as well as all her deficiencies, are connected therewith.

The second point is an historical one. The Church of Scotland rose into existence, and maintained herself through

a severe struggle during centuries, against a hostile regal dynasty and part of the aristocracy, by the pure force of religious energy in the people, hence the decided disinclination of the Scottish Church to Erastianism, in whatever shape and form it may present itself, hence her characteristic jealousy of any suspicious interference of the State in ecclesiastical matters.

The Evangelicals are, in the writer's opinion, the spiritual successors of those men who formerly effected the establishment of the Church of the Scottish reformation against a hostile State; and as the representatives of the genuine spirit of the Church of their fathers, they zealously adhere to what we have called the *personal* view of the Church, and to the principle of her spiritual independence.

The Moderates, in contradistinction to their opponents, may justly be characterized as those who, with regard to the Church herself, prevalently hold the *institutional* view, and with regard to her relation to the State, with more or less disguise, the Erastian principle.

The author enjoys the acquaintance and friendship of many excellent and highly estimable men on both sides of the question; and in order to avoid any misconstruction, he herewith admits that there may be, and really is, on both sides, personal honesty, conscientiousness, and piety; and that of course, in practice, we may expect to find innumerable shades of opinion between extreme Moderatism and extreme Evangelicalism; but such will not militate against the general assertion which the writer dares to make, that Moderatism, in the abstract, may be said to be that constituent element of the Scottish Church which originally united itself to her by conformation, without an appropriate reformation in her spirit.

But to return. It is fortunately in the nature of wrong, that it never is absolute and thoroughly consistent; this is only the Divine prerogative of reason and right. The Act of Queen Anne had taken the right of presentation from the elders and heritors, and restored it to the patrons; but nothing more. It ordains that the Presbytery should *receive and admit the qualified minister presented by the patron;* but altogether "in the same manner as the persons or ministers presented before the making of this Act ought to have been admitted."

Now, what was this manner? That, undoubtedly, granted in the Act of 1690. This allowed the parishioners the right of real consent, the reverse of which is real veto. The only change in the mode of appointment was, that the heritors and elders, who previously possessed in a measure the character of the patron, were now placed in their simple character as members of the congregation with the rest of the parishioners, with reference to the patron. The position of the Presbytery was externally not altered: internally, in so far as the patron acts in the capacity of a civil person, and not as a member of the Church; and thus the relation of the Church authorities towards him could *perhaps* involve some things not contained in the relation of those authorities to the heritors and elders, and other members of the parish, who in this case all acted as members of the Church. That unfortunate "*perhaps*" has now exhibited, like the Trojan horse, an unexpected reality. The whole dispute began on this very point,—that the Church, in this relation of hers to the patron, was accused of having taken a step which she was not entitled to do, which infringed the right of the patron, which was said to be, in fact, illegal. Nay, farther, it was called an illegal assumption in the Church; that she had

not only given the *congregations* a decisive veto, but that she generally claimed it for herself without control altogether. This was a misconception on the part of the State authorities, which, independently of the Veto Act, must have brought about all the subsequent lamentable controversy. On this point the question passed from the principle of Non-intrusion to a question of the constitutional jurisdiction of the powers of the Church and the State, to elucidate which the writer must call attention to another element, without which the Veto Act, in its historical and legal merits, cannot be understood,—he means, "*The Call.*"

The Call.

The principal of Non-intrusion, which the writer has previously expressed in a negative form, may also be regarded in the following positive aspect:—

"*The consent on the part of the parish to the appointment of their minister is as real a prerequisite for his admission, ordination, and induction by the Presbytery as his presentation on the part of the lawful patron.*"

The right of the parish, of which the Veto Act was but a wise and conciliatory negative expression, has always been recognised in the Scotch Church in the continuation of what is styled "The Call." This call is a document solemnly presented to the candidate on the part of the parish, in which they invite him to take the pastoral charge over them. Several essential portions of the ceremony of ordination and induction refer to it; and without it no minister has been admitted into a pastoral office in the Scotch Church for centuries. The form of the document varies in various districts in its expressions, but the substance is always the same. The following is the Call in the Auchterarder case:—

"We, the heritors, elders, heads of families, and parishioners of the parish of ——, within the bounds of the Presbytery of ——, and county of ——, taking into our consideration the present destitute state of the said parish, through the want of a Gospel ministry among us, occasioned by the death of our late pastor, the Rev. —— , and being satisfied with the learning, abilities, and other good qualifications of you, ——, preacher of the Gospel, and having heard you preach to our satisfaction and edification, do hereby invite and call you, the said ——, to take the charge and oversight of his parish, and to come and labour among us in the work of the Gospel ministry, hereby promising to you all due respect and encouragement in the Lord. We likewise entreat the Reverend Presbytery of —— to approve and concur with this our most cordial Call, and to use all proper means for making the same effectual, by your ordination and settlement among us, as soon as the steps necessary thereto will admit. In witness whereof, we subscribe these presents, at the church of ——, on this the —— day of ——, eighteen hundred and —— years."

If, then, patronage has been for 130 years the law of the land, the Call has been also the established law of the Church for centuries.

Patronage contains in itself a limitation of the elective rights of the congregations. But if it is necessary and expedient to limit the congregational rights in the appointment of ministers by means of patronage, it is hardly conceivable why it should not be equally necessary and expedient to limit patronage by means of the congregational rights. Is a Christian community, as a body, really nothing? Is it in an ecclesiastical point of view perfectly denuded of rights? Or, if not, can it only possess them

in external and temporal things, and not also with regard to its spiritual interests? The answer to this question may certainly be embarrassing, if we consider the *de facto* condition of Establishments over the whole Protestant world, England by no means excepted, but in the Scotch Church it has never been doubtful. The author would not be understood to wage unconditional war against patronage; but he would ask, is it entirely free from objection and danger? Is not, on the contrary, absolute patronage incompatible with the character of the Church of Christ, and a thing which has in fact never legally existed?

The simple fact, in the year 1834, was therefore this: The presentation by the lawful patron and the Call of the parish were co-existent, and their co-existence was regarded *bonâ fide* by the Church as possible, having actually existed upwards of a century. Several cases, no doubt, had occurred in the course of that time like that of Auchterarder, in which the Presbytery had rejected the candidate of the patron, and even appointed another, without the civil court seeing sufficient reasons for it in the statutes.

1. Case of Auchtermuchty (Moncrieff *v.* Moxton, 1735.)
2. Case of Culross (Cochrane *v.* Stoddart, 1751.)
3. Case of Lanark (Dick *v.* Carinnhael, 1753.)
4. Case of Forbes (Forbes *v.* Mac William, 1762.)
5. Case of Dunse (Hay *v.* Presbytery of Dunse, 1749.)
6. Case of Unst (Lord Dundas *v.* Presbytery of Shetland, 1795.)

In all these cases, the predecessors of the present Lords of Session had with a proper feeling of justice, and a clear insight into the state of affairs, kept the civil and ecclesiastical parts of the matter clearly and distinctly separate. In the first respect, the decision was against the Church, while in the latter, no unwarrantable assumptions were made. And again, on the part of the Church, perfect obedience was

yielded to the former, while nothing was left to complain of in the latter. Had not the Church in 1834 a right to expect, that when the Court of Session unexpectedly assumed a different position, the House of Lords, as the Court of Appeal, would correct its proceedings? And when she was obliged to respect, in the decision of that House, the certainly surprising yet authoritative exposition of the law of the land (for she at once, in 1839, provisorily suspended the Veto Act), was it a disregard of the highest judicial authority of the realm, if, when it came to the point, whether she could remain an Establishment or not, she applied to the Legislature for a remedy? Let any one place himself in the position of the Scotch Church. She, indirectly in a suit of one of its lower courts, is told, that she has for a century been labouring under a misunderstanding with regard to her constitutional principles and rights. She can scarce believe it, she fancies herself in a dream, till at last she is beyond a doubt assured of the fact by a decision of the House of Lords. And now it is no longer the unfortunate Veto Act, which forms the question. Had the Veto Act never been passed, it must by some means or other have come to light, that the State regarded the conditions of existence of the Scotch Church as an Establishment, in a different manner from that in which the Church had been accustomed hitherto honestly to regard them. The foundations of the treaty between the Church and State are broken up. The petition of the Church to the Legislature demanded undeniably nothing less, than a fair acknowledgement of that treaty, on the strength of which the Church had accepted her Establishment, and which she had promised to repay with a grateful return of service, and on which, moreover, the highest political questions depended. It was a vital and a fateful question with the Scotch Church. The State thought to get the best of

the conflict by the policy of the celebrated Roman Cunctator, and this led to the misfortunes which have ensued. It was a thorough mistake regarding the importance of the question, to think, that by persevering inaction on the part of the State the cloud would pass over.

The Veto Act, as will be shown, was neither illegal in its principles, nor was its promulgation beyond the powers of the Church, the immediate causes of it were as follows:—

As the Church acquired new life, the Anti-patronage feeling gained strength. It was fostered by a series of violent intrusions of ministers upon reclaiming congregations, which had been made under the sway of the Moderates, from an unfeeling disregard to the spiritual rights of the people, and a servile obsequiousness towards the patrons.

In some cases the clergyman, the minister of peace, had been introduced by the aid of the police or military. The improving spirit of the Scotch clergy, and the development of the Church generally, were not produced (be it said, without offence to any worthy and conscientious patron) by the patronage system, but only under it and in spite of it. The inward life of a Church is always the most real and powerful protector of her existence: without this no Veto Act can save her, with it no patronage can essentially injure her. This we may affirm, without denying that there is an optimism of form, after which the Church may strive, and for which, in case of need, she ought to contend.

In 1822, the Anti-patronage Society was formed, whose agitation had already attained considerable power. Petitions poured into Parliament with such rapidity, that it was at last led to appoint a Commission to investigate the subject. And here, perhaps, the writer may be allowed to

make two passing remarks. First, that Commission highly praised the Scotch Church for the efficacy and fidelity with which she has fulfilled her spiritual duties towards the nation. They say, "No sentiment has been so deeply impressed upon the mind of your Committee, in the course of their long and laborious investigations, as that of veneration and respect for the Established Church of Scotland." This praise has been since very often confirmed, even by her opponents, in idle words. Would that they had not considered this verbal praise a sufficient discharge of their duty of justice to her! Secondly, that it was Lord Monereiff, the same distinguished lawyer who seconded most zealously the Veto Act in the General Assembly, and who, before that Parliamentary Commission, strongly, wisely, and eloquently defended the preservation of patronage,—a proof how unjustly, and, to say the least of it, how ignorantly the Protesting Church has been accused of wishing, in an underhand manner, to destroy patronage.

The motive of the Veto Act was just the reverse of this.

This Anti-patronage Society then drew public attention more and more to the question, and the Church became more and more bound to calm the people by a measure which should show, that a loyal submission to the law of patronage was not incompatible with fidelity to the principles of the Scotch Church, the revival of which among her people the Church necessarily saw with pleasure, and was bound to respect. As early as 1832, overtures had been sent to the General Assembly from three Synods and eight Presbyteries, urging it to pass a measure, by which either the Call should be abolished or receive its due right; for, as it stood, it could not be retained without causing public scandal in the Church. At that time a majority of forty-two Members decided against taking these

overtures into consideration. It was said by a speaker, that the matter was of so delicate a nature, and such gigantic importance, that even consideration of it ought to be deferred till the table of the House should groan under the load of petitions and cases of disputed settlement. In the year 1833, forty-five overtures were sent in, and a speaker remarked, that if not the table, at least the clerks of the House, would groan under the burthen of cases of disputed settlement since 1734, if they were to bring them from the archives.

The form of the plantation of a church was as follows:— The presentee delivers the instrument of presentation of the patron, and other necessary papers to the Presbytery. In that instrument the patron requests the Presbytery "to take trial of his qualifications, literature, good life, and conversation, and of his *fitness and qualifications for the functions of the ministry at the church to which he is presented;*" i.e., to try, not only the general ecclesiastical requisites especially pointed out as the meaning of the technical term "*qualified*," but, at the same time, the *fitness for the particular parish*. Let it be, therefore, noticed in passing, that the Scotch Church has clearly introduced no presumptuous innovation in her demand of fitness, acceptableness, or meetness in a presentee, and it was the object of the Veto Act to obtain the judgment of this fitness, &c., from those who, rightly considered, and in a regular order of things, can best exercise such judgment; viz., the members of the parish. For, if the Presbytery after having received the presentation sends the candidate to the vacant parish that the people may have trial of his "gifts of edification," it is evident that these people can best judge whether such a gift is or is not possessed by

the candidate. When the candidate has preached once, twice, or even thrice, the parishioners are invited on a fixed day to issue their Call, after a solemn Divine service. In this document it is shown, first, that they who issue the Call are not strangers. Secondly, that they are attendants at Divine service, and members of the Presbyterian Church. Thirdly, that the candidate will constantly preach to them, and they constantly hear him, and render him all due obedience and encouragement in the Lord. This is the pastoral relationship so often spoken of in the late dispute, as it were a spiritual compact between two parties in the Church, justly called a spiritual one, which no civil power can make or unmake. After the *consent of the parishioners* has been obtained in their Call, according to the idea and law of the Church, the Presbytery examines the candidate as to those requisites which the Church demands of him, and if he then answers the general requirements, good life, literature, and sound doctrine, he is ordained and inducted.

According to this view, the presentation of the candidate by the lawful patron, and his acceptableness, or, at least, the absence of non-acceptableness from the part of the parishioners, are, according to the spirit and law of the Scotch Church, the two preliminary conditions to her undertaking the last proceeding of confirming or rejecting a presentee. If, therefore, in the Auchterarder case, the Presbytery did not take Mr. Young on trial, since 287 lawful voters out of 330 had expressly protested against him, it acted in the spirit and according to the law of the Scotch Church.

In the ordination of the candidate he is asked, *inter alia*, "Do you close with and accept of the Call to be minister of this people?" to which he answers, "Yes;"

but what meaning has this, if the people have no real right, but if the validity of their consent or dissent only depends on the Presbytery's arbitration?

In the course of time the Call had become merely a mockery in the holy place. To this state the Moderates had brought it. When the Act of Queen Anne appeared, the feeling of injured right was so strong in the better class of patrons and the whole people, that, for a long time no patron, ventured to use his restored right, and the Act remained for more than twenty years a dead letter in the Statute-book of the land. The contempt of the rights of the people, which afterwards became a standing practice, was, as must be admitted, first introduced by the Moderate Church courts themselves, in cringing to the wishes of the influential patrons, and in assuming an unwarranted power over the congregations. History tells us, that in the first two cases of intrusion, the General Assembly, although confirming the proceedings of the intruding Presbyteries against the appealing parishes, made at the same time an appeasing apology for their approbation of them. Afterwards the Moderates thought this unnecessary, and from 1735, when they had already gained a decided preponderance in the Church, the Call became more and more an empty form,—a mere compliment of the parish to the minister; and, like all other compliments, not to be taken in earnest. The conduct of the Moderates in the Church courts gradually produced apathy in the churches, and drove those who could not overcome their conscientious scruples out of the Church of their fathers.

The most striking proof of this unhappy condition of the Church under the Moderates, is the fact, that in the course of the century in which they had the majority,

above "*five hundred*" seceding churches were built. This state of things could not continue, if the Establishment was not to be ruined by its own rulers. It was with an instinct of self-preservation, and, indirectly, even for the deepest interests of the State, that the Church of Scotland, on its accession to new life, promulged the Veto Act. If we look closely to what the Scottish Church has done under the influence of the Evangelical party, within less than twenty years, in all her so-called schemes, in her church extension, in her evangelizing of the country, in her schools, both higher and elementary; in her missionary enterprises, in provision for Presbyterian bodies abroad, our admiration will only be surpassed by one grief,—that all these blessings of the Lord have been interrupted by the unhappy calamity into which the Church has been plunged. At the same time, the comparison of their condition with that in which the Church was under the Moderates, readily admitting the aid of many favourable circumstances, furnishes a striking light respecting the spiritual principles and modes of action of both parties. The Church was morally forced to adopt some measure like the Veto Act. She was forced to respect the indignation which was inflamed by the continuation of so gross an abuse respecting the Call. Could she allow a proceeding to continue, which, when once brought into public attention, must degrade her in the eyes of her own people?

Thus stood the Church in 1834, with regard to patronage and Call.

There is now one more historical point to explain, in order to understand the Veto Act, to which the author begs to draw attention, before he enters on a short summary of this first section, viz., the dispute of the Church with Voluntaryism.

Relation of the Church to Voluntaryism.

The Seceders of Scotland have attained, in merely a numerical point of view, to a degree of strength very critical for the Establishment, comprising at this moment, together with the Free Church, perhaps more than one-half of the nation. Their position is very different from that of Dissenters in England. After leaving the Establishment they remain, in every respect, Presbyterians, and sons of the Scotch Church, reproaching that portion of their number, which remains in the Establishment, with delivering up unalienable and recognised rights of the Church of their fathers from the love of temporal advantages, or, as they themselves phrase it, with selling, like Esau, their birthright for a mess of pottage, and with being unlike Moses, who had rather suffer every reproach with the people of God, than feed on the flesh-pots of Egypt. Should it ever happen—an event which may not be impossible—that certain principles, now entertained by a large, influential, and learned portion of the English clergy, should be carried to such a point, that the English Evangelical party should feel compelled to leave the Establishment without thereby ceasing to be Episcopalian, a similar state of things would ensue in England.

When the Veto Act was passed, thirty churches, which had previously seceded, instantly returned into the bosom of the Established Kirk, and there is no doubt, that the Veto Act would have been the means, in due time, of bringing back all those who had not yet taken up such a one-sided view of patronage, as to consider it decidedly Antichristian. This beneficial result of the Veto Act is now also destroyed. When that Act was passed, it was almost the last moment in which the Church of the land could yet fulfil her maternal duties towards her children,

who had been driven out by the fault of her own rulers, and the Veto Act was, therefore, in that point of view a matter of duty.

The Seceders had left the Establishment, still adhering to the principle, that the Church of Christ ought to have an established relation to the State, but became Voluntaries *de facto*. However, it is usual in human affairs, that what first arises from necessity soon becomes habit, that long habit grows into a principle, and if the heat of controversy be added, that what was first a conditional principle, soon becomes an absolute and exclusive one. This, too, had been the course of events in Scotland. It is well known, that the exciting dispute on the principles of Establishment and Voluntaryism had attained almost an unprecedented extent, and a high degree of bitterness; that the Voluntaries had almost become the enemies of the Church, and in their opposition had common cause with men, from whom, in all other respects, they were most advantageously distinguished, those indifferent and worldly people, who see nothing in the Church but priestcraft and clerical ambition. At that time the prevalent cry, "The Church is in danger," was not at all without foundation, and a measure like the Veto Act became indispensable to her safety with regard to her enemies.

We may assert, that in principle and theory the Church under the able guidance of Dr. Chalmers obtained the victory. It is well known how beneficially the lectures, which he delivered in London on this subject, have acted even in England; and any one who knows the facts of the case, and is acquainted with the views of that distinguished individual, may well be angry at the obstinate shortsightedness, with which that high-minded man is now accused of fickleness and inconsistency. His convictions are not changed, although, together with

the whole Free Church, he is *de facto* flung back on *Voluntaryism*. Has he ever asserted that the Church of Christ, as an Establishment, ceases to have certain inherent and inalienable rights and duties? Let the very first of his lectures answer this question. The Church, as an Establishment, gives her services to the State, but does not sell it her conscience. She enters into all its regulations as they are contained in the technical expression, "*jura circa sacra;*" but she cannot allow to it any "*jura in sacris.*" It was worldly unbelief in the power of a moral and religious conviction, capable of any sacrifice, and the non-acknowledgment of the vast importance possessed by the Scotch Church question, both for people and country, which rendered it possible, obstinately to refuse the final hearing and remedy to the suppliant Church, and which, when that Church neither could nor dared recede or step aside, drove her to the measure which she has taken reluctantly but with a good conscience.

In principle and theory then, the Church, under the guidance of Dr. Chalmers and men of a like stamp, carried the day against Voluntaryism. But of what use was this to her, if, in her practice, she allowed that to continue to which her enemies ever pointed as to the real refutation of that theory? With the Establishment, said they, patronage is necessarily connected; with patronage, intrusion; with intrusion, tyrannical oppression of the rights belonging to a Christian people according to the scriptural principles of Protestantism generally, but more particularly the Scotch form of it. It was on the ground of the infringement of these rights by the Moderates that the seceders left the Establishment, regarding it first with sorrow, then with hostility. It is no exaggeration to say, that the Scotch Church, surrounded as she was by

Seceders, Dissenters, Episcopalians, Romanists, Methodists, and other smaller sects, was even then in danger, and was driven to a measure by which she might hope to change at least some of her seceding members from foes to friends. The Seceders, as may be easily conceived, are, like the Dissenters in England, chiefly of the middle and the more respectable of the lower classes of society. By the Reform Bill they had just been gaining a great influence even in Parliamentary elections, and their attacks on the Establishment, which commenced about the same time, became more dangerous. In the so-called Voluntary controversy, the chief and most vulnerable point of attack in the Church was always that respecting "the settlement of ministers," which was at the same time the point in which all Scotchmen of all parties were most interested; and while the enemies of the Church showed, how for a century past the Church, under the sceptre of the Moderates, had sinned in this point against the people, and how, as an Establishment, she could not but continue thus to sin, they not only confirmed their own party in incurable separation from the Church, but alienated more and more her own members from her. Had this continued, the Scotch Establishment would soon have stood to the people of Scotland as the Irish does to the people of Ireland. But, happily for her, the Evangelical party had got the upper hand in her courts,—that party which alone was able to sustain the Church and meet the attacks made upon her.

The Veto Act was the measure which proposed to itself and effected both these ends. Now that the Evangelicals have been driven to secession, and the Moderates have repealed the Veto Act, the fight against the Establishment will be renewed with diminished power of resistance, and

proportionately increased power of attack; and neither the increasing activity of the Moderates, nor the Church of Scotland Benefices Bill will be able to stem the torrent.

These details will show how unfounded was the charge of unseasonableness so often brought against the Veto Act. No one will make such a charge who has followed the debates of the General Assembly from 1832 to 1834; no one who knows the history of the Church and country, its parties, and the causes of their existence, their principles, and their modes of feeling and thinking.

The matter is one purely Scotch, and as the Scotch Church occupies a peculiar position in the Protestant world, the whole affair must be treated on its own ground. All abstract theories, all transference of English views and premises applied to it can only mislead. The measure was imperatively demanded by circumstances, nor has it arisen, as has been unjustly asserted, from a revolutionary spirit. It was no fault of the Scotch Church that the Reform Bill produced at that time a great excitement in the minds of the people, but rather her misfortune, for that popular excitement burst like a violent tempest upon her. The Church, striving to maintain the then existing conditions of her Establishment, and to resist that popular excitement, acted on Conservative principles, and did not make common cause with the Anti-patronage movement. She might fairly, therefore, have looked for better treatment upon the change of Government The Church has been invidiously charged with the intention of making the Veto Act only a preliminary step; its real object kept, however, in the back-ground, having been to eradicate patronage by degrees. The ill-founded nature of this charge is clear to every one who knows the transactions of the period, and the influential men concerned with it, such as Lord Moncreiff, Dr. Chalmers, and others, and who is aware that in the Non-

intrusion Committee appointed by the Church (consisting of more than twenty members) there was but one person holding Anti-patronage principles.

The Veto Act, on the contrary, was passed in order to maintain patronage, and, at the same time, to meet the then existing difficulties. For the future they wanted nothing more than what their opponents have now effectually prevented, viz., to strengthen the Establishment against destructive opponents, and to restore more and more an ecclesiastical unity; and it is a fact, that during the five years of the undisturbed existence of the Veto Act, it had been effecting these objects in a wonderful manner.

In conclusion, the writer would draw attention to one point which deserves the greatest consideration, with reference to the treatment the Church has experienced from the State.

The General Assembly was certainly aware that every measure by which the principle of Non-intrusion was to be secured, must in some way affect the position of the patron. When by various circumstances and express overtures they were forced to act, the question arose, whether it would be better to apply at once to the Legislature, and thus more surely avoid all collision. But the circumstances of the time rendered it advisable to avoid such a step, if the object could be otherwise lawfully obtained; and the experience which the Church afterwards has had of the feelings of Parliament, has but too well justified her apprehensions.

It seemed best, if possible, to avoid bringing an ecclesiastical matter such as this, which touched the deepest principles of the constitution of the Scotch Church, and the appreciation of which required the most intimate and minute knowledge of those very Church views, feelings,

and habits, before a Parliament, which even with the best will could scarcely free itself from peculiar English views. Add to this, that the ecclesiastical interests of the Scotch are not imperial, but local, and could only be represented by very few of the numerous members, and by these even with different views. Add, that Parliament stands in a very different constitutional position towards the Scotch Church, to that which it holds towards the English Church, and that with regard to the Scotch Church it is composed almost wholly of elements strange and foreign to her; that, moreover, the Church disliked to bring an ecclesiastical matter to the political arena, where her opponents possessed such great advantages and so many ways of annoying her, and where she would have to meet, in addition to her contest with her enemies, as well as the minority in herself, the noisy agitation for the total abolition of patronage, and admit that these reasons were urgent enough to induce the General Assembly not to take this course. Moreover, a course was pointed out from a quarter which left no doubt of its legality. Lord Moncrieff, a man recognised by all as one of the first lawyers in Scotland, himself introduced the Veto Act as perfectly "within the powers of the Church." The Church also took the opinion of her own Procurator and other eminent lawyers in the Assembly. What is more, the measure had the express approbation of the Lord Advocate of Scotland, and the virtual approval of the representative of the Crown, the Lord High Commissioner, under whose eye the law was passed. How the matter was regarded in Parliament, may be now very interestingly seen from the mode in which the Lord High Chancellor for the time being has spoken of it in the House.

He said, on July 23, 1834 (vid. "Mirror of Parliament"), on presenting petitions for the abolition of patronage, referring to the Veto Act lately passed by the General

Assembly with the knowledge and acquiescence of the then Government:—

"My Lords, I hold in my hand a great number of petitions from a most respectable portion of His Majesty's subjects in the northern parts of this island, all referring to one subject, I mean Church patronage in Scotland, which has greatly and powerfully interested the people of Scotland for many months past, and respecting the expediency of some change, in which there is hardly any difference of opinion among them. The late proceedings in the General Assembly (viz., in passing the Veto Law) have done more to facilitate the adoption of measures which shall set that important question at rest, upon a footing advantageous to the community, and that shall be safe and beneficial to the Establishment, and in every respect desirable, than any other course that could have been taken; for it would have been premature if the Legislature had adopted any measure without the acquiescence of that important body, as no good could have resulted from it. I am glad that the wisdom of the General Assembly has been directed to this subject, and that the result of its deliberations has been those important resolutions (viz., the Veto Act) which were passed at the last Meeting."

It is true that the Government of that day differed from the present in political views, but on this very account, say the Scotch, the latter might have felt itself the more disposed to do what the former had omitted.

Shortly therefore to resume. The Veto Act was passed not wantonly, but through necessity; not with any crafty design, but to meet the emergencies of the moment; not with any assumption of a right to make arbitrary laws on its own authority, but only to revive, and, at the same time, to moderate the established law and practice, which had

been suppressed, not repealed; not from hierarchical motives, but for the interest of the people; not in haste, but with moderation and forethought, and with the highest legal advice and approbation; not secretly, but in presence and under cognisance of the representative of the Crown, the Lord High Commissioner, and with public praise in the House of Lords.

The Church's object was to do her duty in the best way towards the State, the nation, herself, and her people, and even, had she completely failed in her choice of means, she would not have merited the treatment which she has suffered.

But whether she did or did not fail will now be shown in a brief examination of the Veto Act itself.

SECTION II.

EXAMINATION OF THE PROVISIONS OF THE VETO ACT, AND OF SOME CHARGES BROUGHT AGAINST IT.

THE Veto Act consists of two parts. The first announces a principle, which the Church declares to be one of her fundamental laws, namely, "that no pastor shall be intruded on any congregation contrary to the will of the people." The second contains certain provisions, through which the Presbyteries are instructed to carry the above principle into operation in each single case.

This principle, called the principle of Non-intrusion, was not newly introduced by this Act, but has ever been looked on as an essential one by the Church of Scotland, as in the following part of this treatise will be shown.

The provisions above mentioned are a command of the supreme Church Court to the subordinate ones, concerning their proceedings in carrying out the principle.

The principle was considered unquestionable, unalterable, not to be given up, and inherent in the constitution of the Scotch Church.

The provisions were a matter of expediency, better ones, it was admitted, might be framed, they might be subjected to deliberation, discussion, and alteration.

However unfortunately the unwarranted decisions of the civil courts, and the transactions which followed them, have irrevocably *identified* the retraction of these provisions with the abandonment of the principle, which the Church could not give up without also giving up her own constitution

and nature; so that eventually no alternative has been left to the Church but ingloriously to surrender herself, bound by the fetters of these unwarranted decisions, or resolve on the difficult, painful, but honourable course of bursting these unjust fetters, and a free daughter of free ancestors to quit her parental home as it began to assume the form of a house of captivity.

The chief point which we have to consider, in order to understand the character of these events, is the following:—

"Is the Church of Scotland right in maintaining, that the principle of Non-intrusion in her own sense, that is, in the simple and real sense of the word, is a fundamental law of the Church, and has always existed as such?"

1. If she is manifestly and doubtlessly in the right, then the treatment which she has received is manifestly and doubtlessly unjust.

2. If she was in the right, but in such a manner that her opponents could *bonâ fide* differ from her in their view of it, then again she has been treated unjustly, but those who did her injustice are so far to be excused, as they have acted conscientiously, of which God alone can judge.

3. If she was manifestly and doubtlessly in the wrong, she has not to complain of her treatment while striving to introduce so important an innovation.

4. Were she in the wrong, but in such a manner that she might have been led to her position *bonâ fide* by a pardonable mistake, she cannot accuse her opponents; she has to lament her fate, but by no means does she deserve the revilings which are heaped on her head by her adversaries.

The writer considers the second of these positions as that supported by facts.

Before he proceeds to the proof, that out of the recognised Scottish ecclesiastical and historical authorities, *the legitimacy of the principle of Non-intrusion may be satisfactorily* deduced, he will as shortly as possible investigate the provisions of the Veto Act, in order that the reason, or want of reason, of the complaints against it, may appear in its true light.

The Provisions of the Veto Act.

A. The General Assembly had the intention again to give force to a right of the congregations in the appointment of their ministers, which never had been entirely abolished; as was testified by the very existence and continuation of the Call, but which, owing to the hierarchical presumption of the Moderate rulers, had been depressed gradually to a mere empty ceremony. The question was, whether this right should be restored in a positive or a negative form; that is to to say, whether the General Assembly should make "*the express consent*," or "*the absence of dissent*," on the part of the congregation, a condition of the qualifiedness and admissibility of a presentee. It had, in the writer's opinion, a well-grounded right, even to the revival of the former of these forms, and, perhaps, if it had simply laid claim to the enforcement of the Call in its true sense and whole extent, the negative form, embodied in the Veto Act, would have been readily granted as a compromise. But the Church acted with sincerity and moderation. The ascertainment of the consent of the congregation, through the positive Call, would have very nearly approached to popular election, and would have given to the people a position towards patronage which the Church, out of loyal fidelity to the State, would not permit. Therefore she chose the negative form of the exercise of the congrega-

tional right. The absence of protest was received as silent consent, and thus a formal protest alone would arrest the further progress in the ordinary proceedings.

B. Who is entitled to protest? or, in other words, who is to represent the congregation in its unalienable ecclesiastical right?

The Church sought for competent representatives of the congregation in this serious and important matter among *the male heads of families.* She supposed, that if experience, maturity of judgment, and wisdom, are to be found anywhere, it must be among these. She held that, if any take sincere interest in the settlement of the future pastor, the spiritual friend of the families, the consoler of the people, the instructor of all, and especially of the children, they would be found among this class of persons.

Admitting the view thus taken by the Church to be too narrow; admitting, as some people consider, that every male communicant should have the right of voting; at all events, the provision of the Church in this matter repels the imputation of acting in a democratic spirit so often made against her.

An impartial observer, comparing the abundant provisions which the opponents of the Veto Act have proposed in this respect, with the provisions of the Veto Act, will receive from the latter an impression, as it were, of ecclesiastical chastity. Superfluous liberality has been exhibited in determining the extent of objection, both in the persons objecting and in the subjects of objection. But certainly, if the opinion of the Presbytery, or finally, of the Court of Session, can overrule any protest on the part of the congregation, it will cost little to grant the utmost scope and liberty both as regards objectors and objections.

Justly did not the Church consider every young man of

twenty-one years of age as qualified to have a voice on such occasion.

Justly has the Church rejected, as regards this point, certain distinctions between man and man, which have no relation at all to the kingdom of God: for instance, that between proprietors of land in the parish and those who are not such; between persons said to be educated and those supposed not to be so; and other similar distinctions, which would have introduced only an artificial machinery without affording a real test.

C. These heads of families must be *members of the congregation.* By this provision is secured, as far as human prudence can do so, the voter's knowledge of the wants of the congregation and their interest in the proceedings. The Church here shows herself more moderate and true to herself than those who grant the right of objection to everybody, without regarding whether or not he belong to the congregation, to the Presbyterian, or even to the Christian Church, and who lose sight of the principle of deciding ecclesiastical matters by majority of members of the Church, which is in the genuine spirit of the Scotch Church.

D. Moreover, those heads of families must not only be members of the congregation, but *in full communion with the Church.* This secures, as far as a human provision can do so, the *sincerity* of the interest which the objectors take in the affairs of the *Church.*

E. Lastly, these heads of families must, on pain of losing their right of protest, appear, if required, before the Presbytery, one by one, and personally and solemnly declare, that they are not influenced in their decision by any party interest or any foreign motive, but *exclusively* by the *conscientious* consideration of the *spiritual* interests of themselves, their families, and the congregation.

By means of these measures the Church believed to have protected the purity of protestation, as far as human power can do so, and did not see what further curb it could place on a congregation which should find occasion to protest against a presentee.

The provisions of the Veto Act, therefore, are to this effect, that in order that no minister shall be intruded on a congregation against its will, the Presbytery shall reject any presentee as unqualified, of whom the majority of male heads of families, members of the congregation, and in full communion with the Church, shall declare, that conscientiously considering the spiritual interests of themselves, their families, and congregation, they wish him not to be appointed their minister.

The *fact* of this dissent being declared by the majority, and this *fact alone*, shall be able henceforward to disqualify a presentee for *this* parish in the judgment of the Presbytery.

Such is the Veto, concerning which it has been declared, even by noble-minded persons, that rather than consent to it they would part a right of free election to the people, and which has been thought in many places almost as absurd and inexpedient as to give a class in an infant-school the right of protesting against a teacher which should be appointed over them by a board of education.

The chief unreasonableness and intolerableness of the measure is said to consist in the point, that *the mere act of dissent* in a congregation is to be regarded, whilst, of course, only good and valid reasons ought to confer such a right, and reasons which can be stated and criticised. Under this provision, say its opponents, the most obstinate and prejudiced narrowness will take refuge.

The writer grants at once, in his defence of the Veto Act,

that it might very easily elicit this imputation; but, on the other hand, he thinks that it little deserves it.

The Veto Act was never intended to regulate the whole complication of the circumstances connected with the appointment of a minister, but to consider one of them alone.

The Scotch Church considers, and apparently with reason, that three conditions are requisite under ordinary circumstances to its being lawfully, worthily, and fitly served by a minister.

1. He must be lawfully presented.

2. He must possess the *general* qualifications for appointment in the Church.

3. He must possess the *special* qualifications for the particular congregation over which he is about to be appointed.

The first of these conditions, if in doubt, is to be decided by the civil court.

The second is to be judged of by the Church courts.

The third is, according to the Veto Act, to be determined by the congregation.

But here perhaps the Veto Act has not been explicit enough; and this defect in its framing is the origin of the dislike and misunderstanding which it has met with. It has proceeded summarily, where it should have observed distinctions.

Non-*acceptableness* (default in the third condition) is justly considered by the Scotch Church a positive ground of disqualification in a presentee. But she was proceeding too summarily to make this dependant in a general manner on the feeling and conscience of the congregation. The unacceptableness of a presentee may have two kinds of causes; it may either arise from something in the presentee, or it may arise from something in the congregation. In

the latter case alone does it deserve to be treated and respected as a pure matter of conscience; whilst in the former case it is a subject of consideration which practically perhaps ought to be withdrawn entirely from the care and control of the Church courts. The writer does not mean to say, that in a Church like that of Scotland, which possesses so excellent a congregational organization, it would be a monstrous extravagance to allow the acceptableness of a presentee to be determined summarily even by the mere "Yes" or "No" of the congregation, but he considers this abrupt form of the Veto as not absolutely required by the organism of the Scotch Church. The affairs of the Kirk will not always present the aspect they have exhibited so often during the ascendancy of the Moderates, that of active spiritual life in the congregations, and spiritual death in the Church courts. This was a passing historical state; we are not to conclude that the spirit of intrusion will always reign in the Church courts, on that state therefore no enduring measure ought to be founded. The Veto Act is perfectly right in its principle; but its provisions were not free from a harshness, which showed traces of the excitement and exigences of a passing historical moment.

The provisions of the Veto Act were intended to secure to a congregation its just right concerning the acceptableness or non-acceptableness of a presentee with regard to causes arising in its own peculiarities of feeling, and for this they are well calculated; but they have not confined themselves to this; they have included also in their sphere the causes of acceptableness or non-acceptableness arising in personal peculiarities of the presentee; and in doing this they have subjected themselves to be combated on a ground which did not belong to them. It ought to be

understood clearly that the *conscientious dissent* of a congregation, and the *rejection of a presentee on reasons admitting of discussion*, are not things related to each other as imperfect and perfect, as indistinct and distinct, as ungrounded and grounded, but that they are things specifically different. The former, the conscientious dissent, is grounded also, and upon a reason most to be respected, but one, which, on account of its purely spiritual and comprehensive nature is raised above the province of common juridical discussion and argument. The pastoral relationship is a thing of a purely spiritual kind, founded on the feeling of adaptation of one party to the other in the Lord. Whoever in his life has seen a worthy and holy relationship between a Christian pastor and his flock will be shocked at the barbarism of esteeming such a thing lightly. It is the very blossom of the Church. No Church court in the world would deserve to exist if it did not prize as its highest and most glorious duty the cherishing of this relationship to the whole extent of its power; all the rights to which the leaders of the Church lay claim have no other title to existence than that of enabling their possessors the more effectually to discharge this duty towards the people of Christ, a duty, concerning which even the Apostle Paul said of himself, that neither he (nor any other) was the Lord of the conscience of his Christian brethren, but the promoter of their joy.

Instead of anything the writer could advance on his own part concerning the real meaning of a conscientious protest of a congregation, and the desirableness of respecting it, he prefers to give the views and words of Dr. Chalmers about it. The experience and wisdom of this distinguished individual place him in a position to judge clearly and pro-

foundly of a subject which he himself had much to reflect upon in framing the Veto Act. He says, in the year 1833, before the General Assembly:—

"But the last element in the composition of this affair is the power of the Church. And here the question at once occurs, whether shall the objection taken to the presentee by the majority of the people be submitted for review to the Presbytery, as by the acts of 1649 and 1690, or shall it be held conclusive, so as without judgment by us to set aside the presentation? My preference is for the latter, and I think that I can allege this valid reason for it. The people may not be able to state their objection, save in a very general way, and far less be able to plead and to vindicate it at the bar of a Presbytery, and yet the objection be a most substantial one notwithstanding, and such as ought, both in all Christian reason and Christian expediency, to set aside the presentation. I will not speak of the moral barrier that is created to the usefulness of a minister by the mere general dislike of a people; for this, though strong at the outset, may, literally a prejudice or a groundless judgment beforehand, give way to the experience of his worth, and the kindness of his intercourse amongst them. But there is another dislike than to the *person* of a minister—a dislike to his *preaching*, which may not be groundless, even though the people be wholly incapable of themselves arguing or justifying the grounds of it, just as one may have a perfectly good understanding of words, and yet, when put to his definitions, not be at all able to explain the meaning of them. This holds pre-eminently of the Gospel of Jesus Christ manifesting its own truth to the consciences of men, who yet would be utterly nonplussed and at fault did you ask them to give an account or reason for their convictions. Such is the adaptation of Scripture to the state of humanity; an adaptation

which thousands might feel, though not one in the whole multitude should be able to analyse it. When under the visitations of moral earnestness, when once brought to entertain the question of his interest with God, and conscience tells of his yet uncancelled guilt, and his yet unprovided eternity, even the most illiterate of a parish might, when thus awakened, not only feel most strongly, but perceive most intelligently and soundly the adjustment which obtains between the overtures of the New Testament and the necessities of his own nature; and yet, with a conviction thus based on the doctrines of Scripture and the depositions of his own consciousness, he, while fully competent to discern the truth, may be as incompetent as a child to dispute or to argument it; and when required to give the reasons of his objection to a minister at the bar of his Presbytery, all the poor man can say for himself might be that he does not preach the Gospel, or that in his sermon there is no food for his soul. It were denying the adaptation of Christianity to human nature to deny that this is a case which may be often and legitimately realized. With a perfect independence on the conceits and the follies, and the wayward extravagance or humours of the populace, I have, nevertheless, the profoundest respect for all those manifestations of the popular feeling which are founded on an accordancy between the felt state of human nature and the subject-matter of the Gospel; and, more especially, when their demand is for those truths which are of chief prominency in the Bible, and, let us add, in the confessions and catechisms of our Church, and their complaint, their sense of destitution, is from the want of a like prominency in the sermons. But in very proportion to my sympathy and my depth of veneration for the Christian appetency of such cottage patriots, would be the painfulness I should feel when the cross-questionings of a Court of Review were

brought to bear upon them; and the men, bamboozled and bereft of utterance by the reasonings which they could not redargue, or, perhaps, the ridicule which they could not withstand, were left to the untold agony of their own hearts, because within the establishment which they loved they could not find in its Sabbath ministrations or week-day services the doctrine which was dear to them. To overbear such men is the highway to put an extinguisher on the Christianity of our land, the Christianity of our ploughmen, our artisans, our men of handicraft, and of hard labour; yet not the Christianity theirs of deceitful imagination or of implicit deference to authority, but the Christianity of deep, I will add, of rational belief, firmly and profoundly seated in the principles of our moral nature, and nobly accredited by the virtues of our well-conditioned peasantry. In the olden time of Presbytery —that time of scriptural Christianity in our pulpits and of psalmody in all our cottages,—these men grew and multiplied in the land; and though derided in the heartless literature, and discountenanced or disowned in the heartless politics of other days, it is their remnant which acts as a preserving salt among our people, and which constitutes the real strength and glory of the Scottish nation."

The author begs here to introduce, in addition, the words upon this point, with which Dr. Chalmers concluded his speech on the principle of spiritual independence, before the General Assembly of the year 1839. He says there:—

"Before sitting down, I feel a great inclination to say one word on the antipathy of high and cultivated intellect to our consideration of the *mere fact of a conscientious dissent, apart from any pronounced reasons that might be given for it.* There is no principle, I believe, which

admits of being more thoroughly philosophized, none which could more thoroughly stand the inspection of a most discriminating and profound mental science. But this is obviously a topic of too great unwieldliness for the closing sentences of a speech; and I shall therefore confine myself to one very brief illustration.

"Many years ago I spent a few days, towards the close of his life, with that venerable Christian patriarch, Dr. Davidson, of Edinburgh, whose heavenward aspirations, whose very looks of love and grace celestial, apart from language altogether, bespoke the presence of a man who felt himself at the gate of his blissful and everlasting home. It is with the remembrance of him that I associate an anecdote which struck me forcibly at the time, of an illiterate female in humble life, who applied for admission to the Sacrament, but who, at the customary examination, could not frame one articulate reply to a single question that was put to her. It was vain to ask her of the offices or mediation of Christ, or of the purposes of his death. Not one word could be drawn out of her; and yet there was a certain air of intelligent seriousness, the manifestations of right and appropriate feeling,—a heart and a tenderness indicated, not by one syllable of utterance, but by the natural signs of emotion which fitly responded to the topics of the clergyman, whether she was spoken to of the sin that condemned her, or the Saviour that atoned for her. Still, as she could make no distinct reply to any of his questions, he refused to enrol her as a communicant, when she, on retiring, called out in the fulness of her heart, 'I cannot speak for him, but I could die for him.' The minister, overpowered, handed to her a sacramental token; and with good reason too, though not a reason fell in utterance from her. And so, too, with the collective mind of many a rustic congregation, that thinks aright and feels aright,

without one propounded reason which, if put into a record, would adequately represent the whole truth of sentiment that kindles in their bosoms, and lights up there a clearness of perception, as well as sensibility; which, however beyond the reach of their expression, or of our analysis, gives all the authority of justice to their collective voice. To confine the Presbytery to the reasons of these men, and debar us from all the conclusions grounded on direct sympathy with the men themselves, were to do them the grossest injustice. We stand in dread of it as a prelude to that ecclesiastical policy which, in other days, unchristianized the majority of Scottish parishes, to that shameful tyranny under which the sacred prerogatives of conscience were trampled under foot, and more than half the Christian worth and piety of the land were driven forth of the tabernacles of our fathers."

After the consideration of the contents and the spirit of the Veto Act in the foregoing pages, a few objections which have been brought against it will be easily valued according to their proper worth.

First Objection.

That it would destroy, if practically carried out, the right of the patron, inasmuch as the minister appointed would be, in most cases, not that which the patron wished, but that which the congregation wished; and that thus, virtually, *popular election* would be established.

Answer.

If the provisions of the Veto Act had had free play, their results would have been as follows:—

Each minister of the Scotch Church would have owed his place, just as before the passing of the Act, to a patron; he would have been recognised by the Church court as a

qualified person, and received by his congregation with good-will and confidence; and no one who did not unite these three conditions, would become a minister of the Church. Is not this a desirable result?

To repeal the Veto Act was to destroy a powerful means of securing the Presbyteries from dishonest obsequiousness towards powerful patrons, who would make use of their right of patronage for private interests rather than for the interests of the people; and henceforward many a congregation will have again to submit to spiritual ill-treatment with a sigh, as in bygone times.

The above objection rests, like many others which are made against the Scottish Church, on abstract fears, which vanish before an intelligent mind on the least examination.

Let us consider what must happen before the above dreaded result could take place.

1. It would be necessary that a congregation should have secretly or avowedly some certain person in contemplation, whom it should desire as minister against the choice of the patron.

2. That in this point the congregation, or the majority of it, should be unanimous.

3. That they are unanimously determined to obtain their chosen favourite at whatever cost, even at that of false declarations to the Presbytery, several times repeated with solemnity, a proceeding almost to be classed with perjury.

4. That it should declare its unreasonable veto against one presentee of the patron after the other, until, if possible, the patron should find no other person to present, except the one whom the congregation desires.

5. That the Presbytery should look on this endless frivolous game with indifference or even with pleasure.

6. That neither the minority, the patron, nor the Presbytery, should possess ingenuity enough to unmask the malicious caprice of the congregation, &c.

Who does not see in all this the emptiness, which abstract consideration often presents. The protesting must have an end; and, at all events, the candidate, with whom it ends, is a presentee of a patron. Besides, it is in the interest of the congregation that its minister should be appointed as soon as possible.

Second Objection.

That the Veto Act would practically destroy patronage altogether, and place the choice of the minister in *the hands of the Presbyteries.*

Answer.

This charge is brought forward among others by a learned Scotch lawyer, who generally indulges in suspicious and unfair imputations against the Church, and whose letter published on the matter, is full of untrue and inconsiderate statements. If the matter were not so serious, one might bring together the authors of the first objection, and the authors of the second, and ask them to conciliate their mutual contradictions, in order that the objection, which they finally considered right, might be answered. The unfortunate Church of Scotland can please nobody. For some she is too republican, for others too aristocratic, for some too lax, for others too hierarchical.

As for the charge itself, it might perhaps deceive at first sight, but coming from a Scotch lawyer, it is rather surprising, and exhibits either ignorance or concealment of truth.

It is a law in Scotland, that the patron who has failed to present a qualified candidate within the first six months of the vacancy of the charge, shall, *pro hac vice*, lose the right

of presentation, and that the minister shall be appointed by the Presbytery, "*jure devoluto.*"

Now, opponents say, that if the Veto disqualifies the presentee, and the congregation gives a Veto twice or three times, the six months will pass over and the Presbytery will appoint the minister "*jure devoluto.*"

Not to speak of a number of abstract suppositions involved in this objection as in the former, suppositions which in reality amount to nothing, the substance of the accusation rests, as is said before, on either ignorance or an express concealment of the whole of the Scottish law on this point. For, from the moment that the presentation is lodged with the Presbytery, the time allowed by law ceases to be reckoned, and all that elapses between this moment and the final rejection of the presentee counts for nothing: so that, granting the entire want of conscientiousness both in the Presbytery and the congregation, the patron could, by presenting a succession of new candidates, if he chose, consume a whole century, so that in the end, neither he, nor the Presbytery, nor any presentee, would outlive the downfall of his right.

Third Objection.

That the Veto Act would raise a clerical body, which would rather aim at pleasing popular taste, than at acquiring a true theological education.

Answer.

This is refuted by facts, on comparing the Moderates and Evangelicals. With the latter is, beyond all doubt, the preponderance of knowledge, talent, and zeal, for the highest interests not only of the Church, but of science and humanity too.

The Veto Act has, during the five years of its existence, even as its opponents admit, worked very happily. If the

writer's memory do not entirely fail him, out of several hundred places, to which ministers have been appointed in this time, the congregations have not reclaimed their right but in twelve instances.

On the whole, the Veto Act is so congenial to the spirit of the Scotch Church, that, if it had been permitted time to establish itself in use and practice, all the inconveniences, with which it has been charged, would rather have been unfelt in its operation.

SECTION III.

HISTORICAL PROOF OF THE LEGALITY OF THE PRINCIPLE OF NON-INTRUSION.

Introductory Remarks.—Having, in the foregoing pages, considered the provisions of the Veto Act in detail, it is incumbent on the author to examine into the legality of the *principle*, which was to be carried out by them.

In the year 1841 the Scotch Church solemnly repeated her determination "to assert and maintain the great and fundamental principle of Non-intrusion;" but at the same time she declared, that "she was willing, as she had hitherto been, to consider any modification that might be proposed for carrying the principle into effect."

Since the year 1839, when the repeal of the Veto Act was demanded of the Church, under the charge that it was illegal, this repeal has been identified, through the course taken by the civil courts, partly with the abandonment of the principle of Non-intrusion, partly, as will appear in the sequel, with the resignation of the spiritual independence of the Church in general.

On this account, and on this account alone, and by no means through hierarchical defiance, the Church found herself conscientiously unable to pass an unconditional repeal of the Veto Act.

She petitioned the Legislature to frame a measure, reconciling these two fundamental principles of her constitution with the conditions of an Establishment.

Through whose fault it might have been, we will not

now inquire, but no measure was agreed upon, and, consequently, the dis-establishment of the Scotch Church in May last was an event, which as necessarily followed, as any phenomenon of nature follows its proper causes.

Meanwhile, unjust people, but more so, people ignorant of the matter, have loaded the Scotch Church, without limit, with charges of indecent opposition to law and order, a reproach which, on more minute examination, rather falls on the civil authorities. This would remain true, even if the Scotch Church had been mistaken in supposing that the principle of Non-intrusion had been from of old one of her fundamental laws; for since 1839 the question has no longer been, whether the principle of Non-intrusion be legal or not, but whether the Church had an independent jurisdiction in spiritual matters, or should be subjected, even in these, to the control of the civil court.

Even admitted, the Church had committed an error within her own province, this would not entitle the civil authorities to a perfectly unwarrantable invasion into that province; but, indeed, the sympathy for the Church would be weakened, if she stood before God and her own people guilty of having occasioned this invasion by such an awful mistake in its inherent principles and rights.

The following question is, therefore, of importance:— "Is the principle of Non-intrusion, in the sense of the Free Church, one newly introduced or not?"

The writer believes, that an impartial person could hardly be found, who would not recognise this principle in the spirit and tendency of the Scotch Church, and if it unfortunately be not formally expressed, this could only arise from its being clearly and universally understood as a matter of course.

But this alone would not suffice. The recent Seceders might be perfectly in the right in spirit and in justice, but

if they were not in the right before the formality of the law, their cause would have but a poor chance with the lawyer and statesman. These are inclined in matters of this kind, in which they are themselves parties, to confine themselves to the letter of the law as that magic circle, in which they feel themselves secured against the evil spirit of supposed innovation.

However, the writer is of opinion, that the cause has nothing to fear on the score of legality; but if there be a part of his treatise, of which he particularly feels the difficulty, it is this. He has nothing to bring forward to meet the penetration of the learned lawyer, but the general critical understanding of an educated mind, and that, which in this case may prove perhaps of peculiar assistance to him, the impartiality of a stranger in following the various stages of development of a historical subject.

In the first place, let us endeavour to point out the exact nature of the principle of Non-intrusion. By Non-intrusion is meant, not obliging the people to receive a minister against their will. But the opponents of the Free Church are prone to say, "We, also, are Non-intrusionists, only we require, that the will of the people shall not be arbitrary caprice, as you wish to have it, not a mere humour, which cannot be expressed in words, and which rests on no solid reasons, but of which the mere existence confers a right; we require, that the will of the people shall rest on reasonable grounds, in order that they may be stated, and the Presbytery may judge of them. Thus we desire to maintain the principle of Non-intrusion reasonably understood and defined, and in this sense only we contend, that the Scotch Church has conceived it in all times; you therefore are innovators."

Such a statement has manifestly much plausibility, and the Intrusionists in their pamphlets and speeches consider

that they render it quite unanswerable, if they prove by documents, that the Church courts have always acted *as judges of stated reasons of protesting congregations.*

To the writer the shout of victory of the Intrusionists seems rather premature; he thinks, that the Non-intrusionists might answer in some such words as these:—

"Let us not play with words in such a serious matter. A right, which we are only to possess under the condition, that every single case of its being exercised shall be subjected to the arbitration of a third party, is, properly speaking, no right at all. We include under the principle of Non-intrusion, that the conscientious dissent of an ecclesiastically unblameable congregation shall be an unconditional barrier against the appointment of a minister, but you hold, that this barrier shall only be effectual *under the condition*, that the Presbytery will allow it. You maintain, that if a congregation cannot be induced by a Presbytery to withdraw its conscientious declaration against a minister, but at the same time be incapable of giving in reasons for this declaration, in which the Presbytery can, will, or must sympathize, that the latter be entitled to induct the minister contrary to the wish and will of the people. This right of the Church courts we deny altogether, and consider it unreasonable, un-Protestant, and more especially un-Scottish. We conceive that when a minister comes to a congregation, that he does not come like a missionary to the Heathen, where he has first to collect and form a congregation. In every well-ordered Protestant Church, and particularly in the Scotch Church, he comes to a community of persons, who, as regards religious matters, are to be considered of age,—who stand with him in brotherhood, founded on the same Word of God and the same faith,—who have the right to be esteemed as Christian men, and as persons capable of knowing and

protecting, on the responsibility of their own conscience, the spiritual interests of themselves, their families, and the congregation which they represent. Concerning this they are entitled to exercise judgment. If they judge wrongfully, we grant that it is a great evil, but the blame falls on their own consciences, not on those of the Presbytery. Do the Presbyteries and patrons always necessarily judge rightfully and wisely? The bitter experience of the last century may answer this question!

"Our affair with you stands thus: If you tell us that our principle of Non-intrusion has no foundation in the laws and constitution of our Church, you have not merely to prove that the congregations have always been obliged to state reasons for their dissent, to be judged of by the Church courts; because such friendly Christian dealings and mutual explanations between the Christian people and their Christian rulers are not only not excluded by our views, but entirely and perfectly congenial to the spirit of our Presbyterian Church. But what you have to prove is this, that the Scotch Church has declared, that the right of her Church courts to fetter together a blameless, unwilling, distrusting, and conscientiously protesting congregation, with a disliked parson, not to the blessing but to the calamity of a Christian people, is compatible with God's Word, with Christian liberty, and with Scotch Protestantism. If you can prove that this has been the law or the lawful practice of the Scotch Church, then we, with our idea of Non-intrusion, will own ourselves legitimately defeated, and shall not lament our fate at being obliged to withdraw from a Church in which we cannot establish this principle of Non-intrusion as the legitimate one, which, though not recognised in the Established Church of Scotland, is nevertheless, in our conscientious conviction, an essential one in the Church of Christ. In this case we have *bonâ fide*

hitherto mistaken our liberties and rights; we have now discovered our error, we are obliged to separate from you in order to realize amongst us a form of community, in which that general Christian congregational right is acknowledged, for the maintenance of which we have felt conscientiously bound to strive by every legitimate means."

But if it should appear that the principle of Non-intrusion, in the sense of the Free Church, has ever been not only the tendency, sense, and opinion of the Scotch Church, but is exhibited in her standards, public documents, and authoritative writings, and that either the Scotch Church has not been thoroughly known, or if known, that a new line of proceedings with her has been considered necessary, the cause of the Free Church will be won, and the great injustice which has been done to her will be rendered evident and striking.

The misfortune in treating the Scottish Church question has been, that it has always been conceived and considered either abstractly according to general ideas of ecclesiastical polity and right, or concretely only according to English views, whilst it is a concrete and positive Scottish one. Still the writer of this treatise does not intend to designate by the specific Scottish character of the whole question, that the Scottish Church, with her ideas of congregational right and Non-intrusion, is entirely isolated, and constitutes something unheard of; oh no! one might, on the contrary, rather anticipate *a priori*, that something in itself reasonable and Christian would have found from of old its place and time in Christendom to realize itself. In Scripture and in the four first centuries of the Church, the principle of Non-intrusion is evidently a tacit postulate. In the Roman Catholic Church it became powerless in the same proportion as the principle of the passiveness and powerlessness of the laity was established. The nearer a branch

of the Church approaches to the Roman Catholic in spirit and principles, the more passive and denuded of right and judgment are the congregations in ecclesiastical matters. The Scotch Church being the farthest removed of all the Churches of the Reformation from the Romish, will naturally have the tendency the most to prize the rights and spiritual activity of the congregation. Herein, as appears to the writer, she has a task to perform of great importance to the Protestant world in general, which the superficial observer may pass by unnoticed, but which a more profound historical eye finds distinctly recognisable. But the writer does not wish to raise sympathy for the Free Church of Scotland from the field of the future and (for the present) of mere probabilities; therefore he will return willingly to the firm ground of reality, and requests his kind reader to accompany him to the armoury, out of which the Free Church of Scotland finds her good weapons of defence.

Scottish Authorities.

The writer is obliged to confine himself to the most important and decisive of these.

I. 1567.

The First Book of Discipline.

Let us go back to the earliest authorities.

John Knox, with four other Scotch Reformers, received the commission in 1567, after the Reformed Church was established in Scotland by law, to draw up a sketch of a constitution for it. He did this in "The First Book of Discipline." In this he gives (head iv., chap. 4, sect. 2, 4, 8) the congregation *the right of electing their minister.* This right of course includes the principle of Non-intrusion. For if the congregation can choose for itself, no minister

can be intruded on it against its will, as Dr. George Cook himself, the leading man of the Moderate party, says in his evidence before the Parliamentary Committee on Patronage (p. 316):—

"In it (the 'First Book of Discipline') the election of the minister was given to the people; that implied certainly, that there was to be nobody intruded into the Church."

The right of election contains much more than the right of the Veto, and it may be laid down as an axiom to be borne in mind, in the following explanation, that all authorities which speak in favour of the right of election, speak *eo ipso* in favour of the right of the Veto. For when a congregation chooses one person, it virtually exercises a right of veto against all those which it does not choose, whilst by the Veto Act it does this against one alone. That in the former case it exercises the Veto tacitly, and in the latter expressedly, alters nothing in the position, that the right of election is a greater power than the right of Veto.

"The First Book of Discipline" has indeed not been ratified by the State, and, therefore, is of no value as a legal authority, but its substance is transferred in maturer form into "the Second Book of Discipline," called "the Book of Policy," which, since 1581, as we shall see afterwards, is one of the recognised standards of the Kirk. However, "the First Book of Discipline" is important as a testimony of the views of those men who are the Fathers of the Scotch Church, and whose spirit is still preserved in our days by their true sons.

"The First Book of Discipline" provides for the case, in which a minister shall be appointed by the Church court over a congregation, even against their will; but this can only take place in a case of discipline. Moreover, it is a measure *calculated for this single case*, and instead of

weakening the arguments of the Non-intrusionists, rather strengthens and confirms them; just as when the civil authorities deprive an individual or a corporation of their rights on account of their having forfeited them by some illegal conduct, we are not to conclude that corporations or individuals have no such rights at all really, but rather that their abrogation pre-supposes their previous existence. "The exception proves the rule."

II. 1581.

The Book of Policy; or, the Second Book of Discipline.

This was drawn up by Andrew Melville and other Reformers, and was solemnly ratified by the Scottish Church in 1581, and received among its standards.

It contains (in chap. iii., sect. 4 and 5, and in chap. xii., part 9 and 10) the principle of Non-intrusion, in the sense of the Veto Act, in the clearest terms.

It there says: "In this ordinary election it is to be eschewed that any person be intruded into any of the offices of the Church contrary to the will of the congregations," and "so that none can be intruded upon any congregation, either by the prince or by any inferior person, without lawful election (which then resided with the elders, as patronage was abolished) and the assent of the people."

Remark I.

Calderwood relates, that when the book was ready, after it had been examined and ratified by the General Assembly in 1578, it was laid before the King for his approval. His Majesty ordered a conference to meet in Stirling; and among other amendments demanded was the following:— That instead of the words "*none shall be intruded contrary to the will of the congregation,*" should stand the words, "*if the people have a lawful cause against his life and doctrine;*"

but the Church did not concede this, and adopted the book in 1581 with known and express rejection of this amendment.

Remark II.

It is true, and not surprising, that the book was not then expressly ratified by King James. It is also true, that at the union with England afterwards it was not mentioned as a standard of the Church, as was the case with the Confession of Faith, which was expressly acknowledged in the Treaty of Union. But to conclude from this that it is no standard of the Church at all, as certain lawyers have done, is going too far, since the two Catechisms, of which no one doubts the binding authority, are also not named in the Treaty of Union. It is evident that the Book of Policy perfectly legitimatizes the claims of the Free Church; even Dr. Cook admitted this before the Parliamentary Commission (p. 317), and in his observations on the Veto Act (p. 25, 27, &c.). Again, in 1838, in his speech on spiritual independence before the General Assembly, he even admits "*it came to be a charter of the Church.*" He qualifies this admission, however, inasmuch as he says, that the Church acquieseed in the changes which the law of the land afterwards effected. Fom this follow some points which are important to be recollected for the further development of the matter:

1st. That the change of the law of the Church was not an effect of the acts of the State, but of the acquiescence of the Church; and,

2dly. That, in as far as it is not positively repealed by the State, it is in full power as standard of the Church.

But some lawyers, opponents to the Church, have gone still farther, they denied to the book all authoritative power of granting a right.

In the opinion of the author, this is nothing but an attempt, though a vain one, at a pretext to get rid of this powerful and inconvenient document. The affair stands as follows:—

The Church, in those times of contention with a Government which was inimical to her, declared (in 1581), that the Book of Policy, although not ratified by the State, was her standard of government and discipline, as the Confession and the Catechisms were its standards of faith, and the directory its standard of worship. All Scottish ministers have since then been obliged to sign it; and the whole Scotch Church may be said to be only the second book of discipline *realized* and *carried out*.

The question now arose whether the Scottish Church, *thus constituted*, should continue to exist or perish. Providence decreed that she should continue to exist; for in 1592 the State recognised her as she then existed. The celebrated Act of Parliament of 1649, which will be hereafter considered, pre-supposes the authority of the Book of Policy as a matter of course.

The argument of its opponents is, that as in the Act of 1592 some parts of the book were expressly quoted, all other parts, which were not expressly mentioned, were rejected.

But this "argumentum ex silentio" proves too much, and therefore becomes useless to its supporters, like an overbent bow.

For that, which is quoted from the seventh chapter of the book, relates only to one point, namely, the treatment of the various objects before the various Church courts, a matter, the regulation of which the King had especially at heart, on account of certain circumstances closer to be examined in the last portion of this treatise; and therefore the above assertion destroys itself by an inherent absurdity.

For if the Scotch had nothing secured to their Church constitution and ecclesiastical privileges by law, except what is expressly mentioned in the Act of 1592, it would follow that they had a Presbyterian Church, in which there were no acknowledged laws and rights concerning the constitution of her Church courts; concerning the constituents of these courts; concerning the peculiar Presbyterian character of her ministry; nothing concerning the existence of three kinds of Church office-bearers, the doctors, deacons, and ruling elders; nothing concerning the power of the Church in ordaining, solemnizing matrimony, or even preaching.

For of all this there is no mention, neither in the Act of 1592 nor in the Confession, but in its proper place, namely, the Book of Policy.

Is so powerful a historical reality as the Scottish Church to be set aside by a few technical quibbles? Would not her very existence speak, even if all her charters and documents were to be placed under seal? Is it right and wise to make so light of revered documents, containing the fundamental principles of an institution held in sacred right by the nation?

Remark III.

Those opponents of the Free Church who recognise the Second Book of Discipline, but do not wish to see in it the severe Non-intrusion principle, grant that the assent or consent of a congregation was required, but at the same time maintain that this was subjected to the control of the Presbytery. The answer is, that this is a begging of the question. The document, simply considered, makes the consent of a congregation as real a condition to the induction of a minister as the presentation on the part of the eldership. If the consent is a real condition, the dissent

is a real obstacle. An example may serve as illustration of the meaning of the word consent or assent in public documents such as these, which is beyond dispute with lawyers and parties of every kind in Scotland. The Act of Parliament of 1707, in relation to the teinds or tithes, gives the Court of Teinds the power of "*transporting kirks*," but always "*with the* CONSENT *of the heritors of three parts out of four at least of the valuation of the parish.*"

Every body knows, that under this Act these heritors have unfortunately exercised a very real Veto against the building of new churches, and that the Court of Teinds have not the power, nor have they made the attempt to demand of the heritors to submit the reasons of their refusal to their arbitration. The unqualified Veto of the heritors has made its reality sufficiently palpable in the matter of church extension.

Remark IV.

Impartiality demands the more minute investigation of the grounds on which the opponents (mentioned in No. III.) found their right of admitting a conditional Veto.

In the year 1576, some years before the framing and adopting of the Book of Discipline, the General Assembly issued some articles "concerning the office of Visitors," in which these visitors were empowered to appoint ministers under the presentation of patrons and the consent of the Synod; "*providing always, that the consent of the flock where he shall be appointed be had, or else* A REASONABLE CAUSE BE SHOWED BY THEM WHEREFORE NOT."

We cannot blame the Intrusionists for asking that in the interpretation of the Book of Policy the same point of view should be taken which the Church herself took a few years previously in her instructions to visitors. The

answer is: We must understand the matter in the spirit of its connexion. These visitors, who travelled about to regulate the disordered congregations, at a time when Romanism and Protestantism had just torn themselves asunder, were temporarily appointed and required naturally certain powers granted to them to supply the wants of the Church, which was then arising. But in order to take the point of view from which we must consider the Church as a permanent institution, we must not recur to temporary provisions adopted under passing circumstances and for special practical objects, but rather consider the solemn legislative measures calculated for all times. The Book of Policy exhibits the spirit of these.

But granting that the instruction for visitors of 1576 be a rule of interpretation, the same objection would arise with regard to the interpretation of that instruction itself; namely, that the finding of the principle of intrusion in it is a begging of the question. The protesting congregations have always the duty incumbent on them of giving "*a reasonable cause*" why they object to receive a minister, but who would undertake to prove that the old Scottish Church considered it an unreasonable ground, or a groundless dissent, when a congregation said, "this man does not edify us, and therefore we do not wish for him."

III. 1596.

Notwithstanding the Act of Recognition passed through necessity of 1592, the Government and patrons of that time began to introduce trouble into the Church. Therefore the General Assembly of 1596 passed the Resolution, that "because by presentations many forcibly are thrust into the ministry and upon congregations that utter thereafter that they were not called by God, it would be pro-

vided that none seek presentations to benefices without the advice of the Presbytery within the bounds whereof the benefice lies; and if any do in the contrary, they to be repelled as "*rei ambitus.*"

If this be quoted by the Moderate Intrusionists against the Free Church, as a proof that it has been in all times in the spirit of the Scottish Church that the *judgment of the* PRESBYTERY decide on the appointment or non-appointment of a minister, the answer is, that the Free Church does not wish to take any real right from the Presbytery, but to secure a real right to the congregation, and that the two rights do not exclude each other.

On the contrary, why did the General Assembly require that no candidate should request presentation of a patron before having received the consent of the Presbytery, but because "many forcibly were thrust in the ministry and *upon congregations.*" This document establishes rather the Non-intrusion principle, both as regards the Church as a whole, and each single congregation. What would this General Assembly, which Calderwood characterizes as the last of "the sincere General Assemblies" which he could speak of, what would it have said in 1835 with regard to Mr. Young and the Auchterarder case?

Note.—The next forty years of the Scottish Church, extending to the so-called second Reformation, in 1638, are a troubled time. King James and his ill-advised successor neglect no means to undermine the much-hated Presbyterianism; and who can be surprised that they succeeded in inducing ignorant, or cowardly, or selfish men in the Church herself to make temporizing declarations and compromises. The two Melvilles are the stars of those times. Overwhelmed, apparently crushed down, imprisoned, banished, these are the men who rallied the wavering ranks

of the Church, and maintained the battle so long that the Church and her rights ultimately triumphed.

Neither State nor Church ought to recur to these times to look for precedents and information how to act at present. The history of the General Assemblies of Perth and Dundee (1597) is equally disgraceful for both parties, and the Moderates and Intrusionists ought, at least, to be Presbyterians, and Scotchmen enough to disdain any apparent help from those times.

IV. 1638.

The celebrated General Assembly of Glasgow, under the moderation of Henderson, overthrows all the machinations and intrigues which had been carried on in the Church during the previous forty years concerning the point in question, and this by the declaration that "anent the presenting either of pastors or readers, and of schoolmasters to particular congregations, that there be respect had to the congregation, and that no person be intruded into any office of the Kirk contrary to the will of the congregation to which they are appointed."

The Moderates say, in order to explain this Act as being on their side, that the above passage recognises that when a schoolmaster or reader be appointed, the people are to be asked, and have an opportunity of bringing forward their objections, but that the Church courts are to examine these, and, if they see ground, set them aside, and appoint the person.

To this the Non-intrusionists answer, "This is true, but it does not affect our view; for, when closely examined, we find this law to consist of two parts. The first declares quite generally, that at the appointment of a minister, reader, or schoolmaster, the congregation is to be heard. The second, on the other hand, speaks especially of the

minister, and expresses the principle of Non-intrusion; for, of the three officers named, the *minister alone* fills an office of the Church, for, as you well know, and will not deny, readers and schoolmasters were declared by the General Assembly, in 1580, not to be office-bearers of the Church."

V. 1641.

In all probability it was Alexander Henderson himself, but certainly one of the leading men of the Church, who wrote in the year 1641 a book, which is rightly considered an authentic exposition of the view and practice of the Church in this matter as she then existed. This book, entitled "The Government and Order of the Church of Scotland," takes the principle of Non-intrusion to be a matter of course.

Page 6.—"The presentation on the part of the Eldership (for the elders then possessed it) takes place *with the consent and goodliking of the people.*"

Pages 9 and 10.—"On the day of ordination, the candidate is to be asked, among other things, '*concerning his willingness and desire to serve the Lord Jesus for the good of that people,*' and the congregation is to be asked, '*whether they will receive him for their pastor, and submit themselves unto his ministry in the Lord.*' Then follows:—'*Both having declared their readiness and mutual consent,*' &c.; and then come the ordination and induction."

Page 13.—"In case the candidate has been already ordained, and is only transplanted to this congregation (from another), one of the Presbyters performs the Divine service for the induction of the minister with the '*congregation who have before declared their willingness and desire to receive him.*'"

At page 8, we find:—"No one is here obtruded upon

the people against their open or tacit consent and approbation, or without the voice of the particular eldership with whom he is to serve the ministry."

VI. 1640 and 1641.

Several Acts of Parliament furnish a collateral testimony concerning the degree of estimation attached to the principle of Non-intrusion in the Scottish Church at this period. They transfer to the Presbyteries the patronage of such benefices as were in former times disposed of by bishops, adding the provision that they shall exercise the patronage "without prejudice to the interests of parishes, according to the acts and practice of the Kirk since the Reformation;" and, as synonymous with this, "with the consent of the parish;" and "upon the suit and calling of the congregation." Now, when we consider how natural it is, that civil authorities should be inclined rather to protect and foster the rights of ecclesiastical courts than those of the ecclesiastical people, we must conclude that these careful provisions for protecting the rights of the people are a decisive and important testimony of the great estimation in which these were then held, and that they contain at least the recognition of a real right of Veto; and it is beyond doubt, that, if the Act of Queen Anne had been as careful in prescribing to the restored patrons such provisions as the State considered necessary to prescribe even to the Church courts themselves, the unhappy intrusions of Auchterarder and Marnoch would not have taken place. But the Act of Queen Anne had doubtless sinister views at bottom.

Remark.

A few words are here necessary upon a document of this period, which the Intrusionists bring to their support, and

from the general declarations of which they deduce, that the Church herself has had the intention of granting to the congregations the right of objection, but under condition, that the Church court should judge of it, and if it deemed fit, set it aside.

In England, the principles of the Independents or Congregationalists, which for a short time held the ascendancy under Cromwell, began to spread more and more. The Independents reject all collective Church government. They maintain, that each separate congregation is a perfect and independent Church of Christ in itself, and has the right to govern itself in accordance with the Scripture. The English Presbyterians now applied to the General Assembly to learn its views on this point. The letter, which the General Assembly wrote to them in 1641 ("Off. Acts of the General Assembly," reprinted under the superintendence of the Church Law Society, Edinburgh, 1843, page 50), was drawn up by Alex. Henderson, and gives to the Scottish Presbyterian principle of a collective Church government a decided and strongly expressed preference over Congregationalism. This general point of view is to be kept in mind in reading this document. But the Intrusionists read it, as if it were purely an abstract theory of the rights of congregations concerning the placing of ministers. Henderson, Gillespie, and other men who then led the Scottish Church, wished, as we shall afterwards see, to give the right of election to the congregations, and even the letter, which the author speaks of, requires the "tacit consent" of the people, although it is strongly opposed to Congregational principles with regard to Church government. But there is no contradiction in asking for the most energetic and best regulated Church government on the one hand, and the greatest liberty and justice to individuals or congregations on the other. On

the contrary, it ought to be the aim and duty of every one, who has influence in the government of a Church, to point out the way in which both may be combined to the greatest possible extent, and in the greatest possible harmony. However, even granting it to be inconsistent, that the Scottish Church, in this document, denies to the congregation all active participation in the government of the Church, and yet grants it the privilege of a real Veto in the election of their ministers, the Intrusionists would nevertheless not have won their point, because they acknowledge, as well as their opponents, the Bible as an authority, which is higher than any logical consistency or argument. Now, that the principle of Non-intrusion be conformable to Scripture, and have been in full force in the first four centuries, the Intrusionists cannot deny.

VII. 1642.

The King agreed to appoint to the places under his patronage *one* of six candidates, which the respective *Presbyteries* should propose to him. The General Assembly, consequently, drew up in 1642 certain regulations, according to which the respective Presbyteries should prepare lists for vacant parishes under the Royal patronage.

This the Intrusionists consider as favouring their view of the definitive powerlessness of the congregations in opposing the presentee—but they overlook one point, namely, that one of these regulations provides, that the Presbytery shall choose a candidate, "with consent of most or best part of the congregation."

In order that no doubt may remain, that according to the view of the Church the absence of this consent was a real obstacle to the Presbytery, let us listen to the testimony given by Baillie, a distinguished contemporary, in his letters (Vol. I., pages 341 and 342), in which, speaking

of these regulations, he says:—"Sending up six to the King to present, any one whereof we would assure should be *accepted* by all, who had interest;" which is evidently incompatible with the principle of Intrusion.

VIII. 1645.

Westminster Assembly.

That which appears the most formidable testimony against the principle of Non-intrusion, in the real sense of the Free Church, is contained in "The Form of Presbyterial Church Government, and of the Ordination of Ministers, agreed upon by the Assembly of Divines at Westminster."

This document, dating from the year 1645, and approved of by the Scottish Church, has also the expressed sanction of the State in the Treaty of Union, and merits, therefore, particular attention.

The leading thought concerning the matter in hand is thus expressed:—

"No man is to be ordained a minister for a particular congregation, if they of that congregation can show just cause of exception against him."

In the "Directory," for the Ordination, we find the words:—

"He that is to be ordained being either nominated by the people, or otherwise recommended to the Presbytery, for any place, must address himself to the Presbytery," &c.

After his "gifts and qualifications" have been examined by the Presbytery—

"He is to be sent to the Church where he is to serve, there to preach three several days and to converse with the people, *that they may have trial of his gifts for their edification*, and may have time and occasion to inquire into, and the better to know, his life and conversation."

Then the congregation is to give public notice that—

" A competent number of the members of the congregation nominated by themselves, shall appear before the Presbytery to give their consent and approbation to such a man to be their minister, or otherwise to put in with all Christian discretion and meekness, what objections they have against him, and if, upon the day appointed there be no just exception against him, *but the people give their consent*, then the Presbytery shall proceed to ordination."

The General Assembly adopted this Directory with the following clause:—

" Provided always, that this Act be no ways prejudicial to the farther discussion and examination ..... *of the distinct rights and interests of Presbyteries and people in the calling of ministers*, but that it shall be free to debate and *discuss these points* as God shall be pleased to give *farther* light."

Remarks on this document.

I. It defeats the decided Intrusionists, for it refutes the sense of the term "qualified presentee," which was adopted by the House of Lords, in 1839, on the occasion of the Auchterarder case, and which confined the qualification merely to a technical and juridical sense, relating to life, literature, and doctrine.

It establishes, as condition for ordination, the much disputed "acceptableness," or "suitableness," inasmuch as the people are to judge "*of the preacher's gifts for their edification.*"

II. It gives to the moderate Intrusionists an apparent though not real ground to think themselves justified by its wording.

III. It contains nothing against the Non-intrusionists, but rather presupposes their principle to *exist* in the

Scottish Church, as will be shown by a more detailed view of the circumstances under which the document was framed.

The Westminster Assembly was called together to draw up a form of doctrine, government, discipline, and liturgy, for the common use of the whole of Great Britain. The three contending elements of the Reformed Church of that time were represented in the Assembly by their most distinguished defenders. On the one side were the Episcopalians, with their Catholicizing ideas of Church and Church matters (although less numerously represented); on the other, were the Independents, with their (so to speak) congregationalizing ideas: and, between both, were the Presbyterians, ready to unite with the Episcopalians against the Independents in maintaining the Church as a whole, of which the single congregations are parts, and collective Church government, to which the single congregations are subjected; and ready to unite with the Independents against the Episcopalians in the rejection of the prelatic forms of the Church and Church government.

Scotland had among its deputies its three most distinguished theologians, Henderson, Rutherford, and George Gillespie, who were more than Non-intrusionists, inasmuch as they wished to give the congregations the right, authorized by Scripture, of electing their ministers, as was really the practice of the Scottish Church of that time.

The opinion of the English Presbyterians was different from this. Among this body many were, of course, to be found who agreed with their Scottish brethren. Travers (the opponent of Hooker), and Cartwright (the opponent of Whitgift), were on this account prosecuted, and, on Melville's invitation, went to Scotland: in the Assembly Marshall, Calamy, and especially Young, supported the views of the Scotch; but the English Presbyterians were

inclined to give the congregations large rights. They were partly under the involuntary influence of Episcopal education; partly out of aversion to the extreme of Independentism, they softened their asperity towards the other extreme; partly also they must have been influenced rightly by the thought, that in the fermenting and disordered condition of the English congregations at that time, they were little capable to exercise such important rights; in short, the English Presbyterians were inclined to take a similar view to that taken at present by the moderate opponents of the Free Church; and the Scottish Presbyterians, and those of the English who held the same views with them, were not able either to carry through the right of election or that of unconditional Veto. At last the resolutions, mentioned above as contained in the document in question, were agreed on, in which, it is to be observed, the assent of the congregation is required, but in which any regulation for the case of their dissent is purposely avoided.

What follows from this?

That the document contains those points, on which all parties could agree; but the Scotch, whose personal convictions and character have been elsewhere shown, would never have agreed to this document if it had been incompatible with the principle of their Church, the principle of Non-intrusion. Their view was that which is now entertained by their spiritual successors, the modern Non-intrusionists. They could vote for this document to its fullest extent without betraying their national Church, which only went somewhat farther than it did.

Every Non-intrusionist can readily and without inconsistency agree with this document, only he would add:

"But my opinion is, that if a congregation deliberately and conscientiously declares that it be not edified by a preacher, this constitutes '*a just cause of exception against*

him.' And nowhere do we find in the document, that, notwithstanding this, the preacher is to be intruded on it. The consent of the congregation is required in the document, but no right of intrusion is given to the Presbytery in the case of its dissent. Our forefathers would never have allowed this. What the document contains is true and good; but it is not the whole truth, it is not all the good we then enjoyed in Scotland, but which could not find recognition and support in Great Britain collectively. Our forefathers contented themselves with it at that time, not that the document contained a perfect exposition of the Scottish principles on the point, but that it contained all that our Church could obtain at that time in common with the English; at any rate, it contained nothing inimical to the principles of the Scottish Church. On this account, when our forefathers returned home from the Assembly with this document, our Church ratified it, but not unconditionally, inasmuch as she added the clause—

"'Provided always, that this Act be no ways prejudicial to the farther discussion and examination of the distinct rights and interests of Presbyteries and people in the calling of ministers, but that it shall be free to debate and discuss these points as God shall be pleased to give farther light.'

"In addition to this we also learn from Baillie (vol. ii., p. 90), that the same Gillespie, who remained till the end of his life more than Non-intrusionist, who distinguished himself in the Westminster Assembly as the most zealous defender of this truly Scottish principle, that he himself sketched the Act of the General Assembly of 1645. Therefore do not let it escape your mind, that the General Assembly affixed a condition to their approbation by this 'provided always,' &c., that it gave this conditional approbation in the fresh memory of what the year 1638 had

established regarding the rights and mutual relations of our people and Church courts, that it gave it by the pen of the Gillespie and in the sense which its Gillespies, its Hendersons, its Rutherfords had recognised. In that '*provided always*,' *&c.*, as you see, it secured, on the one hand, its principle of Non-intrusion; but, on the other, it left the more accurate limitation of the rights of the Presbyteries and those of the rights of the congregations open to debate. Why do you think it did the latter? Not indeed in order that its principle of Non-intrusiou might be debated away, but only in order to leave open the means and forms of it for the convenience of the Church of England, which was to use the same standard. Later, when Episcopacy gained once more the ascendancy in England, our forefathers were free in this respect, enjoying full liberty of regulating their Church affairs according to their own homely views. And in what way they have done this the Acts of 1649 and 1690 will plainly show."

Remark.—The Scottish Church took at that time a position similar to that which she took in 1841, when she declared that she was conscientiously bound to maintain the principle of Non-intrusion, but that she was at the same time willing to give up the provisions of the Veto Law and accede to others, provided only that this principle were secured.

IX. 1694, c. 171.

An Act was passed by Parliament in the year 1649, obviously through the influence of the Church, which leaves no doubt whatever of the opinion of the Church in respect to the principle in question. This Act declares, "that patronages and presentations of kirks is an evil and a bondage under which the Lord's people and ministers of this land have groaned; and that it has no warrant in God's

Act 1649, c. 171. (vol. vi., p. 411, seq.)

Word, but is founded only on the canon law, and is a custom Popish, and brought into the Kirk in time of ignorance and superstition; that the same is contrary to the *Second Book of Discipline* and to several acts of General Assemblies, and that it is prejudicial to the liberty of the people and planting of kirks and unto the free calling and entry of ministers unto their charge."

The Act then forbids and annuls "all patronages of kirks, whether belonging to the King or to any laic patron, Presbyteries, or others within this kingdom, as being unlawful and unwarrantable by God's Word, and contrary to the doctrine and liberties of the Kirk."

The Act then ordains that the places of ministers shall be filled "upon suit and calling, or with consent of the congregation, on whom none is to be intruded against their will."

It then enacts, that "Whosoever hereafter shall, upon the suit and calling of the congregation, after due examination of their literature and conversation, be appointed by the Presbytery unto the exercise and function of the ministry in any parish within this kingdom, *without a presentation by virtue of their admission*, shall have right to all the fruits of the benefice."

It enjoins the next General Assembly "to condescend upon a certain standing way for being a settled rule therein for all times coming."

The General Assembly fulfilled the task in the production of the following *Directory*:—

"I. When any place of the ministry in a congregation is vacant, it is incumbent to the Presbytery with all diligence to send one of their number to preach to that congregation, who in his doctrine is to present to them the necessity of providing the place with a qualified

pastor, and to exhort them to fervent prayer and supplication to the Lord, that he would send them a pastor according to his own heart. As also he is to signify that the Presbytery, out of their care of that flock, will send unto them preachers, whom they may hear; and if they have a desire to hear any other, they will endeavour to procure them an hearing of that person or persons, upon the suit of the elders to the Presbytery.

"II. Within some competent time thereafter, the Presbytery is again to send one or more of their number to the said vacant congregation on a certain day appointed before for that effect, who are to convene and hear sermon the foresaid day, which being ended, and intimation being made by the minister that they are to go about the election of a pastor for that congregation, the session of the congregation shall meet and proceed to the election, the action being moderated by him that preached; and if the people shall, upon the intimation of the person agreed upon by the Session, acquiesce and consent to the said person, then *the matter* being reported to the Presbytery by commissioners sent from the session, they are to proceed to the trial of the person thus elected, and finding him qualified, to admit him to the ministry in the said congregation.

"III. But if it happen that the major part of the congregation dissent from the person agreed upon by the Session, in that case *the matter* shall be brought unto the Presbytery, who shall judge of the same; and if they do not find their dissent to be grounded on causeless prejudices, they are to appoint a new election, in manner above specified.

"IV. But if a lesser part of the Session or congregation show their dissent from the election, without exceptions relevant and verified to the Presbytery, notwithstanding

thereof the Presbytery shall go on to the trials and ordination of the person elected; yet all possible diligence and tenderness must be used to bring all parties to an harmonious agreement.

"V. It is to be understood, that no person under the censure of the Kirk because of any scandalous offence, is to be admitted to have hand in the election of a minister.

"VI. When the congregation is disaffected and malignant, in that case the Presbytery is to provide them with a minister."

Examination of this Document.

The impartial examiner who considers this most important document, together with the Act of Parliament, of which it was the ecclesiastical realization, can have no doubt that it establishes the principle of Non-intrusion in the sense of the Veto Law, and is its precursor in spirit and form.

Clause II. states, that if the congregation (or, what is the same, the majority of it) consents to the candidate presented by the Kirk Session, the matter is to be reported to the Presbytery, who examine the ecclesiastical qualifications of the presentee, and, if nothing is found against him, appoint him.

Clause III. But if the congregation (or the majority of it) dissent, the matter is also to be submitted to the Presbytery, "who shall judge of the same," and, if it find this dissent not grounded "on causeless prejudice," a new election shall take place.

Clause IV. But if the majority do not dissent, and the minority cannot produce to the Presbytery "exceptions relevant and verified," the appointment shall proceed.

The Non-intrusionists argue upon these things in the following manner:—

A. "Clause III.," they say, "contains the right of decisive Veto of the congregation in the sense of the Veto Act, whilst clause IV. only obliges the minority to support their dissent before the Presbytery in the same manner in which the Intrusionists and the Church of Scotland Benefices Bill wish to oblige the *whole* congregation to proceed in every case."

"Why," they continue, "is a distinction made between majority and minority if the rights granted to the majority respecting dissent were not different from those granted to the minority! The mere existence of the distinction between majority and minority is a deathblow to the Intrusionists, and exhibits the genuine spirit of Scottish Church legislation in contradistinction to that of the most recent Bill; for this Bill does not consider the *quantum* of the dissent, but only the *quale*, of which the Presbytery has always to judge without regard whether objection be made by all, by many, by few, or by a single person."

On the other hand, the Intrusionists say, that the distinction is only to be looked on in the following sense:—If the majority dissent there is a *prima facie* presumption that the dissent is grounded, and the Presbytery must take time "to judge the matter;" but if only a minority dissent, there is a *prima facie* presumption that the dissent is ungrounded; and if the dissentients cannot bring forward "relevant and verified exceptions" at once, the Presbytery may with safety neglect it. In other words, the Presbytery has to judge of the matter in the first case with care, and in the second it may proceed in a more summary manner. This clearly appears in clause III., from the expression "the *matter* shall be brought unto the Presbytery." The word "*the matter*," evidently designates more than a

report on *the mere fact* of the dissent, it includes stated reasons given to the Presbytery to be judged of.

The Non-intrusionists reply to this, and, as appears to the writer, with reason:—Why lay a stress on the word "*the matter?*" You have only to read clause II., and you will find, that, even in the case of *consent* "*the matter*" is to be judged of by the Presbytery; and here nothing can be meant but *the mere fact* of the consent; and the Presbytery has nothing further to judge of than whether or not the presentee satisfies the Presbytery's own demands. And what you advance concerning a distinction between a *prima facie* ground of probability, and one which is not *prima facie*, is a pure invention of your own; no word of it is to be found in the document. Every impartial lover of truth will grant that the intention of the document relates purely to the quantitative distinction of majority and minority of dissenting voices, and by no means to the distinction of more leisurely or more summary proceedings in the examination of the quality of the reasons for dissent. We grant that the document, which even in the case of the dissent of the *majority*, gives the Presbytery the power of judging of the causelessness or validity of the dissent, pre-supposes, that the Presbytery engages with the dissenting portion in certain transactions; but we have had no desire to refuse or abolish this either in maintaining the Non-intrusion principle or in framing the provisions of the Veto Law. On the contrary, we have always advocated this power of the Church, as in clauses V. and VI., in which the Presbytery is allowed, by way of discipline, to suspend the right of election of a whole congregation altogether. But we maintain, on the other hand, that the intention of this document is, that if the majority expresses its conscientious dissent in the following form: "This minister fails in edifying us,

and we have no confidence that his fulfilment of his office among us will be happy and successful;" this dissent is not to be held as causeless prejudice. We maintain, that under the head of causeless prejudices are to be classed, in the intention of this document, such superficial trifles or rumours which would disappear to the congregation itself on a calmer representation, so that the dissent would cease just as this amicable and brotherly treatment of the affair is recommended with regard to the minority in clause iii. so that all may come to an harmonious agreement.

B. But we also maintain, that from all this results, that the *onus probandi* at least lies with the Presbytery or the minority, not with the congregation, as you would have it.

C. And we maintain, that in all cases where the Presbytery cannot convince the congregation, no word is to be found in the document to show that the Presbytery is entitled to intrude a minister on the reclaiming congregation against the conscientious dissent of its majority. In this manner alone all parties have their real, and not merely apparent right. The *Kirk Session* (at that time in the place of the patron) *presents;* it is no popular election, and the judgment of the Presbytery on "*the matter*" has to protect this right. If, for instance, the minority of the Kirk Session (for it would have been *their* business) could prove that the presentation had been obtained by intrigue or improper influence, the Kirk Session would be bound to make another presentation. The *congregation consents*, and the judgment of the Presbytery in "*the matter*" has to protect this right, for not without the consent of the congregation, and certainly not against it, could an appointment be lawful. The *Presbytery examines, ordains*, and *inducts*, and, without this activity of the Presbytery, the new minister could not be the lawful minister of the parish,

even though Kirk Session and congregation had unanimously chosen him.

This view of the document is defended by the first theologians and lawyers of Scotland, and the writer deems it an honour to join their ranks. Lord Monerieff has specially entraced it with clearness in the Auchterarder case. It is incontrovertibly the view taken by contemporary authorities. ("Conf. Baillie," vol. ii., page 340; "Gillespie's Miscellanies," chap. ii.) It defeats Intrusionism, and establishes the legality of the principle of the Free Church. This document is, however, so much the more important, as it serves expressly as basis of the last document of 1690, to the consideration of which we proceed.

Remark.

The next forty years of the history of the Scottish Church are a troubled time, to which the same remarks apply, as to the period between 1600 and the so-called second Reformation. The daughter of Laud (the Church of what is to-day High-Puseyism) was to be married, at all sacrifice, to the free, sober, High-Protestant Scotchman. The melancholy event of this tragedy is well known.

A Noble and Learned Lord in the Court of Session makes the remark,—"It is striking how little the right of patronage is mentioned among the struggles of this period." As if it followed from this, that patronage was something to which the Church was indifferent. But, granting the remark itself to be historically correct, it shows nothing more than that he, who is struggling with the storm-driven ocean for existence, is not concerned for the moment about the rain which accompanies the storm. However, the remark is not actually correct. Among the reasons for which the best of the Scottish clergy could not conscientiously con-

form, and about the half of them were violently driven from their places, was always included their unwillingness to submit to being presented by a patron, and of having their appointment made valid by a bishop, as the shameful Act of Parliament of Glasgow, of 1662, required of those placed after 1649. This injunction violated the conscience of the Church of Scotland as it had manifested itself in the Directory of 1649.

The writer confines himself here to the following quotations, which exhibit the opinions of some men, whom even the Intrusionist must recognise as the true sons of the Scottish Church in those perilous times. (Conf. W. Cunningham, "Defence of the Rights of the Christian People," &c. Edinb. 1841, page iii., seq.):—

Wodrow, vol. i., page 283.

Robert Douglas, "A Brief Narrative of the coming in of Prelacy to this Kirk," by Wodrow, l. c., page 286.

Brown's (of Wamphray) "Apologetical Relation." 1665. Sec. 9, page 102.

Alex. Jamieson's (of Govan) "Apology for the Persecuted Ministers," &c. 1677. pp. 71, 72.

Thomas Forrester's "Rectius Instruendum; or, a Review and Examination," &c. 1684. Part i., chap. 4, pp. 33, 34; part iii., chap. 3, pp. 76, 77.

All these authors maintain the right of congregations, conformable to Scripture and to reason, to be, at least, a *real consent* at the placing of their pastor, as the whole affair was established by law in 1649.

X. 1690. c. 53.

The just-mentioned period of violence on one side, and of weakness or courageously borne injuries on the other, gave vent at last to its fermenting elements in the Revolution, through which prelacy and the ecclesiastical

Act 1690, c. 53, (vol. ix., p. 196.)

supremacy of the Crown were abolished in Scotland and Presbyterianism was re-established as the religion of the land.

Buchanan mentions, in his "History of Scotland," that the Scottish Protestants demanded, as early as 1558, "that the election of ministers, according to the ancient custom of the Church, should be made by the people;" and *Wodrow* relates, that the Scottish Presbyterians of 1688 desired, in an Address to the Prince of Orange, among other things, "that laical patronages be discharged, as was done in the Parliament, 1649, and the people restored to their right and privilege of election, according to the Word of God."

So, in 1690, patronage was formally and solemnly abolished, and the provision was made, "That in case of the vacancy of any particular Church, and for the supplying the same with a minister, the *heritors* of the same parish, being Protestants, and the *elders*, are to name and propose the person to the whole congregation, to be either approven or disapproven by them; and if they disapprove, that the disapprovers give in their reasons to the effect, the *affair* be cognosced upon by the Presbytery of the bounds, at whose judgment and whose determination the calling and entry of a particular minister is to be ordered and concluded."

The writer will here observe, that the document under consideration, taken in connexion with the historical circumstances under which it arose, has been justly considered by the Scottish Church as *a regulated system of congregational election in the animus of Non-intrusion;* although it is not to be denied, that reckless Church Courts may take refuge in the wording of the provisions of this document and overrule the conscience of a disapproving congregation. In such a case, the *Church*, through her own

Courts, would do wrong to her own people, as the Moderates have copiously done during the last century; but a more religious and sincere race of Church rulers, filling the courts, who should be influenced by the true spirit of the Church of their fathers, and, therefore, take her documents without spiritual presumption or tyranny, as they were originally meant, would carry out the principle of Non-intrusion under this document in the most decided and direct manner, as the General Assembly did in the year 1834.

On the other hand, the Intrusionists cannot honestly support their own sense by this document, because, since its drawing up, an unfortunate occurrence has entirely altered the position of affairs. The *Act of Queen Anne* has been passed notwithstanding this document; notwithstanding the Act of Security which guaranteed this document; notwithstanding the Treaty of Union, which was founded on the Act of Security; and its undeniable injustice, though of long standing, is still felt.

According to the Act of 1690, the Church regulated the plantation of charges entirely within herself. The *presenting elders and heritors*, as well as the *consenting* or *dissenting parishioners*, acted in this in an *ecclesiastical* character, and the check against the misuse of the *right of presentation*, as well as of the *right of protestation*, was rightly placed, *under these circumstances*, in the Church courts. But when the Act of Queen Anne committed the injustice of introducing the patron on the stage, the whole affair assumed another aspect, inasmuch as the patron acts in no ecclesiastical character. Therefore the question could not but arise on the part of the Church, whether or not she ought to consider this so deadly a blow, that after this breach of treaty on the side of the State, she was bound to dissolve the established union with it, which

would naturally have involved the most difficult politieal questions. However, the Church hoped for justice. The Act of Queen Anne had at the eommencement of its existence no effect at all. But in after times the Scottish Church learned by bitter experience, what abuse this Act is able to effect, when unconscientious courts of the Church themselves adopted it as a weapon of intrusion or refuge of obsequiousness.

The Intrusionists have no right to take shelter under the Act of 1690, for this document acts under the supposition of the non-existence of the patron. After the intrusion of patronage, the Scottish Church cannot be blamed, that, whilst acquiescing in it, nay, recognising it (as the Veto Act does), she is desirous to sceure at least as much of her rights of 1690 as the Act of Queen Anne has not taken from it; and to modify these, as far as she lawfully might be allowed to do, to suit the altered relations.

Now, here arises a contention between the Intrusionists and Non-intrusionists, the merits of which must be distinctly understood. The Act of Queen Anne places (to use its own term) the power of presentation of the "*heritors and* OTHERS," henceforward in the hands of the patron. The *Non-intrusionists* say of this, that by the term "*others*," are meant only the "*elders*," who had hitherto presented the candidate, together with the "heritors," to the *congregation*, as the term "heritors and *others*," in the Act of Queen Anne, manifestly corresponds to the term "heritors and *elders*," in the Act of 1690. The *Intrusionists*, on the eontrary, say, that under the term "*others*," in the Act of Queen Anne, are included together the *elders and the parishioners*, who from 1690 jointly presented the eandidate to the *Presbytery*. According to the former view, nothing would be altered by the Act of Queen Anne except the passing of the presentation from the "heritors and elders"

to the patrons. The consent of the parishioners would *continue* to be as essential a condition as the presentation by a patron, and therefore their dissent or veto a real barrier. According to the second view, on the contrary, all that had been the province of the "*heritors, elders, and parishioners jointly,*" before they could present a candidate to the *Presbytery*, had passed over to the patron, and the Act of Queen Anne had left the congregation without any right or participation in the appointment whatever.

The writer believes that, impartially considered, both in a philological and historical point of view, the interpretation of the Intrusionists is false, and they are entirely refuted by the continuing existence of *the Call.*

If it be false, nothing can be objected to the principle of the Veto Law, little to its provisions. For it was the intention of the Veto Law to secure this right of the parishioners, (which naturally now belongs also to the heritors and elders,) as protection against a mischievous operation of the law of patronage, and the principle of Non-intrusion is rightly to be deduced from the Act of 1690, for how could a minister be intruded on a congregation if an agreement had to be made among the congregation itself, namely, between the heritors and elders on the one hand, and the other parishioners on the other, before the candidate could be presented to the Presbytery for trial, confirmation of the Call, ordination, and induction?

But even granting *that the Intrusionists were right* in maintaining that the Act of Queen Anne had taken from the congregation all right, as well of presentation as of consent or dissent, at any rate *the right of the Presbytery* would remain unaltered. The decision of the Presbytery, and finally of the General Assembly, *was made conclusive by the statute* of 1690, (as it had been conclusive, as will be

shown in the last part of this treatise, since 1567,) in every case of the appointment of a minister. This stands valid, whatever may be said of the principle of Non-intrusion. If the Intrusionists and Moderates maintain that the minister may and ought to be intruded on a congregation by *the Ecclesiastical Court*, this is a very different thing from the ministers being intruded on the Ecclesiastical Court, or the Church in general, by a lay person or a civil court. The latter is at all events decidedly against the statute rights of the Scottish Church, so that, even if the Non-intrusion principle were not to be proved legitimate directly and formally from the documents of the Scottish Church, the principle of spiritual independence in the constitutionally defined sense is undeniable.

And from this ground inferring backwards the passing of a measure such as the Veto Act is perfectly legitimate, and by no means beyond the powers of the Church.

But it is this very spiritual independence of the Kirk which has been so offensive to lawyers and statesmen, that even most noble-minded persons could exclaim "*Rather no Establishment at all, than one with such claims!*" Have they forgotten that these claims have been legally ratified since 1567, and again most solemnly, 1690; have been respected for 150 years, so that the non-acknowledgment of them is a new injustice, which has in our time driven more conscientious men out of the Church of their fathers in one single day, than the Act of Queen Anne in a whole century? Truly, impartial history will honour the conscientious Seceders, whilst it will leave for ever a blank page for the answer to the melancholy question, why it ought to have been reserved to a highly-enlightened and Conservative Government to split and virtually to paralyze an Ecclesiastical Establishment which was the firmest, the most effective and energetic, the best adapted to its people of any existing in the three kingdoms.

SECTION IV.

THE AUCHTERARDER CASE, BEFORE THE COURT OF SESSION AND THE HOUSE OF LORDS; GIVING RISE TO THE CONTROVERSY ON THE LIMITS OF CIVIL AND ECCLESIASTICAL JURISDICTION.

BEFORE the author proceeds any farther in a representation which will enter more and more into individual and positive questions of law, he begs to explain the position which he considers himself as legitimately occupying in criticising these points.

He is no lawyer; he is firmly convinced that a *peculiar talent* is requisite for success in the legal profession as well as in every other sphere of high mental activity; and he frankly admits that he may be deficient in this talent. If while admitting this defect he considers the distinguished persons and high quarters from which the decisions in question have emanated, and the fact, moreover, of his being a foreigner, he might at first sight find himself rather called on to believe than permitted to criticise.

Notwithstanding this, perhaps he might be permitted to take his ground without presumption, at any rate, on the following general reasoning:—To one person, it may be contended, are given the talents and powers of practical action; to another the faculty of contemplating, conceiving, and estimating the bearings of this action. And, in reality, we know that an enlightened critic, for instance, may pronounce, without presumption, concerning the greatest works

of art, without being able himself to execute the slightest production of their kind. The administrators of the law are by no means above the criticism of their fellow-mortals in the performance of their avocation, and the less are they so in a country where the passing and the administering of the laws are a subject of public cognisance. Love of justice, sufficient acquaintance with the respective statutes, and a mind sufficiently well exercised in general matters to conceive a point at issue and judge of it, are by no means objects which the sons of Themis have acquired, to the exclusion of the rest of the world.

However, this is not the ground which the author pretends to occupy in his exposition, but rather the following:—On both sides of the question the highest legal and judicial authorities have been engaged. These have given to the public all that can be brought to bear on the question, both *pro* and *contra*, in debates in the halls of justice, as well as in the great field of literary controversy. Decisions have been pronounced, refutations proffered, and the refutations in their turn refuted, and the acts of the great suit lie open and accessible to every one. Around these, as it were, a grand free jury of contemporaries are assembled, and every one may consider himself empanelled who takes an earnest interest in the spiritual affairs of mankind here at stake, and who has followed the speakers on both sides of the question, and the evidences of the witnesses, with understanding and attention. And here, when he asserts his opinion, he is far from presuming to pronounce the *incontrovertible*; but he may have received an impression and express it, that certain points have remained throughout the transaction *uncontroverted*. These he may advance in favour of the defending party. Such is the field to which the author proposes to confine himself; and if, after having taken every precaution to intrude on

no ground which he does not feel himself able legitimately to possess and defend, he allows himself some boldness and firmness of expression, he prays his kind reader not to see in those unwarranted assurance, but rather the independent decisiveness of a man, who, through unexpected circumstances, finds himself summoned to give his single voice among those of that grand jury of contemporaries.

The point of collision from which the unhappy misunderstandings between the State and the Scottish Church take their primitive rise is the

"*First Auchterarder Case.*"

In the decision of this case by the Court of Session, in its confirmation by the House of Lords, and in the further measures taken by the Court of Session under the countenance of this confirmation, the pending controversy concerning the possession or loss of independent jurisdiction in spiritual matters by the Church, has first arisen, and afterwards became inveterate.

Before considering the detailed points of this case, the author may observe, that it is truly painful to reflect that such a case could even happen. A point of law arises, which is in itself insignificant and obscure, and although in later times purposely upheld and pursued, yet, in its origin, unworthy and accidental; and upon this insignificant, isolated, and accidental point, as upon a bad card, the dearest interests of the Scottish Church and nation are staked, to be established or overthrown by the event of a single chance. This will ever appear very strange, and lead necessarily to an inference of foreign motives. For it was the General Assembly, or, in other words, the Church herself, not the particular Presbytery of Auchterarder, which framed the Veto-law.

This enactment contains instructions to the subordinate Church courts concerning points of Church government, namely, the appointment of office-bearers in the Church, and the formation of a desirable spiritual relationship between pastor and flock. Over these points the Church considered herself legally entitled to independent control. She issued these instructions in the spirit of a law of the Church, which she held as a fundamental one; she did it under the eyes and with the acquiescence of the Lord High Commissioner, who sits in the Assembly as representative of the Crown, and who is sent there to restrain the Church in any measure she might contemplate, in which the rights and interests of the State and its subjects might be endangered. She did it not, indeed, with the official sanction of the Lord Advocate of Scotland and other law-officers of the Crown (for such sanction was not part of their sphere), but with their friendly advice and personal countenance. She did it, as is proved afterwards in the course of Parliamentary business, with the knowledge and approbation and loud praise of the Lord High Chancellor for the time being. Suddenly the measure is denounced as "*illegal*," as "*beyond the powers of the Church*," as "*injurious to the rights of patrons*," as "*dereliction of a public duty on the part of the Presbytery*," in refusing to take a presentee on trial.

But let us inquire, in what form this complaint is made. Does the *State* say to the *Church*, "You have exceeded your powers; we cannot and will not suffer your measure?" By no means. An individual appears, of whom, unfortunately, we cannot think otherwise than that he was seeking a flock, not so much in order to feed it as in order to shear it; he makes common cause with a patron, who appears entirely to have forgotten that he had made formal declaration through his agent (as is shown by the

minister of the Presbytery of Auchterarder) that he submitted to the operation of the Veto-law, and he requires of the Court of Session to find and declare, that the application of this law to his particular case is an unwarranted act of the Auchterarder Presbytery, and demand that he should be taken on trial. The Court of Session considers itself competent to take cognizance of the case in this form, and defines to the Presbytery its duty in matters which (as will appear) are entirely beyond the province of a civil court. At a later period, in what is called the second Auchterarder case, the Presbytery is condemned to a considerable fine; the candidate might as well have insisted on the imprisonment of his ecclesiastical superiors until they granted him his will.

It appears to the writer, that the responsible party in this case was the General Assembly, together with the united Presbyteries who passed the Act, since the Presbytery of Auchterarder only obeyed its constitutional and recognised superiors. An officer is not reprehensible when he executes the order of his commander-in-chief in matters of military duty; but is, on the contrary, guilty when he does not execute it. Should, therefore, an individual Presbytery have been made responsible for executing the injunctions of a law imposed upon it by its constitutional superiors? It appears, in reality, that an independent authority and responsibility is supposed to be in the individual Presbytery in order to accuse it, which is just as arbitrarily denied to it afterwards in order to condemn it. This form of taking up the matter against the Church may not be illegal; but, at any rate, it is strange and to be lamented. However, it is manifest that the controversy is intrinsically a purely ecclesiastical one, and its influence on civil rights and interests was, in the first place, not illegal, and, in the second, not important. But when the

minority of the Church, in the bitterness of their defeat, and by means of some individual members, who are Moderates in the Church and out of it lawyers, gave to the question, under the appearance of zeal for constitutional right and justice, a connexion with civil interests, then at once it should have been perceived, that the case was very different from a common case of purely civil right, and on this account the civil authorities (be it spoken with due respect) ought not to have allowed themselves to be influenced by the party-spirited views of a wounded minority of the Church, however much these might, at first sight, have appeared to coincide with their own general sympathies and theories. This origin of the question accounts for the strange mixture of penetration and superficiality, of apparent distinctness and want of constant principles, of judicial learnedness and neglect of history and facts, which appear in the public transactions in the matter.

The writer will now attempt to bring before his kind reader the details of that celebrated and remarkable lawsuit.

A few months after the passing of the Veto Act, a Mr. Robert Young, a probationer, and therefore a person *not yet ordained*, was presented by Lord Kinnoul to the pastoral charge of Auchterarder. The congregation consisted, according to the census of 1831, of 3,182 souls. On the roll of communicants were 330 male heads of families.

In the constitution of the Scottish Church there is a very wise law called the Barrier Act. In pursuance of this Act no regulation of the General Assembly of any important effect on the constitution of the Church can become a "standing law" of the Church before it is presented to all the Presbyteries individually (of which

there were at the time of the passing of the Veto Act seventy-three,) for ratification, and before it be ratified by an absolute majority of them. By this means a law undergoes, before passing, the scrutiny of all the office-bearers of the Church. Withdrawn from the impetuous atmosphere of debate in the Hall of the Assembly, where the peaceful equilibrium of judgment might often be more or less disturbed by momentary impressions or imposing personal influences, it is presented to the quiet discernment of practical men, who are destined afterwards to bring it into operation in the individual parishes of the Church. It is the same danger of partiality of view, and of too great mobility, against which the Barrier Act is continued in the Presbyterian Church, which is met in the Episcopal Church by the division of the Convocation into two Houses.

Until the following annual session of the Assembly, that is, until the votes of the Presbyteries are collected, a Resolution has a temporary efficiency. Therefore the Veto Act first became *standing law* in 1835, forty-seven Presbyteries voting for it and twenty-six against it.

The Presbytery of Auchterarder therefore considered itself bound to proceed in this case according to the Veto Act, in which his Lordship, through his agent, signified his acquieseence.

In the moderating in the Call on the part of the congregation, it was found that out of 3,182, besides the agent of his Lordship, who did not belong to the congregation, neither more nor less than *two* individuals, Michael Tod and Peter Clerk, had signed the Call.

On the other hand, of the 330 heads of families, 287 made a positive protest.

Mr. Young appealed to the higher Church courts, not *on the ground of the illegality of the Veto Act*, but alleging

that errors had been committed in making out the roll of communicants. The General Assembly, to whom the appeal ultimately arrived, dismissed the appeal, and the Presbytery rejected Mr. Young according to the Veto Act.

Mr. Young appealed against this rejection to the Synod, probably in order to arrive through this intermediate court at the General Assembly; but he soon retracted this appeal, and, in fact, it had little appearance of utility: but we must remark, that to this point he had always pleaded under recognition of the laws of the Church and the authority of his ecclesiastical superiors.

But from this point he changed his mode of proceeding, and Lord Kinnoul made common cause with him in a recourse to the civil authorities.

Their "libel" contained, in its first form, nothing which did not strictly belong to the province of the civil court. Mr. Young sued, that the Court of Session should find the validity of his presentation (which nobody doubted), and secure to the patron and himself the emoluments of the benefice according to the statute of 1592.* This view of the matter was founded on the opinion which the Dean of Faculty had expressed before the General Assembly, in his "Reasons for Dissent to the Veto Act," that a presentee, rejected under the operation of the Veto Act, would have a claim for the temporalities of the benefice even though not inducted by the Presbytery.

According to the Scottish law, the Established Church is the legal guardian of her temporalities. Therefore, in the usual peaceful course of things, she performs, through her Presbyteries, two functions; she bestows on her minister the *charge* by the ordination, which is in itself a *spiritual* act, and bestows the *benefice*, i.e., the tem-

* This statute will be considered in the subsequent section of this treatise.

poralities, on him as consequence of this by the *induction*, which is in itself a *civil* act. The former act is performed by the Church in the name and under the commission of Christ; the latter in the name and under the commission of the State, which has been pleased to raise her to the rank of its Establishment, and to grant her its confidence in constituting her the legal guardian of the funds of her endowments. In every thing which regards these temporalities, therefore, the Church is perfectly under the control of the State. The State can resume from her all her revenues, if it should think it proper either to have no Established Church at all, or to raise another ecclesiastical body to this position. It can also, at any moment, demand accounts of the Church by means of its legal organs, of her fidelity to the statutes of the land; and these legal organs are, in every question relating to this civil element of the Church, perfectly competent and conclusive in their juridical decisions. The Church has in this respect nothing to ask by virtue of Divine right; she has no civil rights except those which the State has voluntarily conferred on her, and continues voluntarily to accede to her, and which the State can, by its own free act, alter or withdraw.

The Church, in all her individual members owes to the State, in this respect, implicit obedience, and her duty, especially as an Establishment, will ever be to educate her children as obedient and faithful subjects and citizens. These views have never been denied, but, on the contrary, irreproachably carried out into practice by the Free Church of Scotland. But, on the other hand, the State has no power over the spiritualities of the Church, nor would a Church be allowed to grant it such a power (by means of treaty or acquiescence in the decision of a State tribunal), without committing an offence of incalculable consequences,

both against him who is her invisible head, and who has instituted her amongst men as witness and instrument of his spiritual ends, and against those within her whose souls are entrusted to her by him, and to whom she has to administer salvation.

In order to acquire a just idea of the principle that a Church can respect the State earnestly and sincerely, and by no means with a mere Jesuitical appearance, and yield it implicit obedience in all temporal things, and at the same time may oppose it to the utmost by all moral and legal means in any inappropriate interference in spiritual matters, the writer begs to offer the following explanation. The Christian Church, as a whole, and every individual branch of it, as a whole, such as the Church of a nation, is neither the ruler nor the slave of the State. She is an Institution of independent, Divine origin, and derives therefrom her own organism, vitality, and rights. She does not take her rise from the same element of human nature which gives birth to the State. From her peculiar nature she cannot be ranked as equal to the State, as superior to it, nor as inferior to it; there can be no comparison of rank at all between them; she cannot be considered as contained in the State (since the State is national, and the Church universal, or Catholic), nor can she be considered as containing the State in herself, assuming the form of a theocratical commonwealth, but she has without the State, (that is to say, not *extra*, but *præter*,) a real existence and power. As an expression, and for preservation of her spiritual life, she has certain inherent rights, ordinances, and forms of community, and the source of these is the will and word of her Divine founder, not the ordinations of the State Councils, however well-intentioned and Christianly-minded these may be. On the rationality of this abstract and passing view of the nature of the Church, and on the consequent rela-

tion between Church and State, the author cannot longer dwell; it will be sufficient to remind his indulgent reader of the fact, that the above-sketched view, but expressed theologically and in scriptural terms, is espoused alike by the three great ecclesiastical bodies of these three kingdoms, although they differ from each other in realizing it internally, as to constitution, discipline, doctrine, and form of worship, and externally in their relation to the State. That which the Scottish Church, in the recent struggle, has called the principle of spiritual independence, is nothing else but the defence of the above view by the Church in its concrete Scottish form; and the question is, simply, whether or not this form is legitimate, which the author will investigate in the following part of this treatise. He is, therefore, of opinion, that the vague charges, that the Scottish Church has infringed the laws of the land, has despised the ordinances of God, has cherished monstrous hierarchical pretensions, are founded in insufficient acquaintance with the subject of dispute, or in pure logical inconsistence, and have been originated by ecclesiastical or national, or personal antipathies, and influences of habit and custom.

This important subject can only be properly estimated by following its principles intelligently to their origin, and *he* alone can impartially view it who regards both Church and State, with equal reverence, esteeming as an ordinance of God the one no less than the other, and wishing that to each may be granted its just rights, or, at least, that neither should suffer the loss of such just rights, which had been already lawfully and rationally established.

It is strange, but not the less true, that the Auchterarder case has been the battle-field upon which the minority in the Church has attempted, by the help of the power of the State, to uphold that which they were unable to maintain

by the power of truth and justice against the awakened spirit of the Church, and if the author may allow himself the passing remark, the preference given by the State to the minority of the Church, in disregard of an imposing majority, is something so foreign to the organism and spirit of the Scottish Church, that she must be pardoned if she believe herself misunderstood by her judges even in this elementary principle of her constitution.

In consequence of the previously explained position of a Scotch Presbytery, with regard to charge and benefice, the libel of Lord Kinnoul and Mr. Young could, in its original form, have no effect. The Presbytery had indeed declared that it would implicitly obey the decision of the Court of Session, in respect to temporalities; but the difficulty arose which has been already mentioned. In order to take possession of the temporalities of the place, it was, according to Scottish law, necessary that Mr. Young should have been *inducted* by the Presbytery; in order to his induction his ordination was necessary; to this his having been taken on trial was necessary; to this, such a Call from the congregation as the Presbytery could conscientiously deem sufficient. This latter condition, even according to the gentler test of it required by the Veto Act was wanting, and, therefore, likewise all the others.

The pursuers soon perceived that in order to gain their ends another mode of proceeding was necessary, and they, therefore made an "amendment of the libel," intended to produce the *induction* of Mr. Young, to which, of course, his trial and ordination were requisite. Therefore, they abandoned the civil province, and brought matters before the Court of Session, over which, the Church maintains, that it had no control.

The amendment was as follows:—That the Court of

Session should discern and declare "that the Presbytery of Auchterarder, and the individual members thereof, *as the only legal and competent Court to that effect, by law constituted*, were bound and adstricted to make trial of the qualifications of the pursuer, and are still bound to do so; and if, in their judgment, after due trial and examination, the pursuer is found qualified, the said Presbytery are bound and adstricted *to receive and admit the pursuer as minister* of the church and parish of Auchterarder, according to law; that the rejection of the pursuer by the said Presbytery as presentee aforesaid, without making trial of his qualifications in competent and legal form, and without any objections having been stated to his qualifications, or against his admission as minister of the church and parish of Auchterarder, and expressly *on the ground* that the said Presbytery cannot and ought not to do so *in respect of the veto of the parishioners*, was illegal and injurious to the patrimonial rights of the pursuer, and contrary to the provisions of the statutes and laws libelled."

It will be proper to form a clear idea of the position which the Court of Session assumed on sustaining the amended libel.

I. The civil court summons an ecclesiastical court before its bar, in order to prescribe to it a duty on which—to use the terms of the summons—the ecclesiastical court was "*the only legal and competent one*" to perform.

II. The act itself, namely, the rejection of a presentee from the service of the Church in general, or with regard to a particular place in it, is recognised by the civil court as lying in the province of the Presbytery, and even in its province alone. It is only the ground of rejection of the candidate, which the civil court declares to be insufficient and even unlawful, namely, the Presbytery paying respect to the almost unanimous protest of the parish. In this,

however, it proceeded under the countenance, and even the injunction of the General Assembly; so that the civil court assumes the position of a court of control over the ecclesiastical courts; for to examine the grounds of proceeding of a court in a case legitimately in its province, and to confirm, alter, or set aside its proceedings, according to the result of the examination, is the business of a superior court of control to which appeals are made from lower courts.

III. If the civil court is competent to "*declare*" authoritatively that under certain circumstances the Church is "*bound and adstricted to receive and admit a presentee*;" it is also empowered and even obliged to force her to do so in case of refusal. But as the *admission* of a probationer (of which Mr. Young was one) presupposes his *ordination*, the civil court assumes the position, under certain circumstances, of commanding the Church under pain of fining or imprisoning her responsible representatives, to *ordain* this or that person. In short, the relation is about to be introduced into the Scottish Church, *mutatis mutandis*, which exists in the English Church, at least, according to the letter of unrepealed laws, in the case of the election or consecration of a bishop, under a *congé d'élire* and *præmunire*, a relation entirely foreign to the Scottish Church.

IV. The civil court takes the position of exclusive interpreter of the rights of the Church. In this spirit it declares it to be an unconditional duty of the Presbytery to take the candidate on trial, whilst the Church maintains that she constitutionally possesses the right and the duty of exercising, by means of her Presbyteries, before taking a candidate on trial a discretionary power over certain preliminary conditions.

The civil court declares it to be illegal to reject a candidate without stating grounds against his qualifications

after due trial and examination, which (we must understand) the Court of Session may overrule, as in this case it expressedly overrules, non-acceptableness as a valid ground against qualification. The Church, on the other hand, maintains, that non-acceptableness is a valid ground against the qualification of a candidate for any particular place, and that she has constitutionally the final decision concerning his fitness for ordination. The Church, therefore, looks on her rights in a different view from that of the civil court. The Lords of Session of the whole of the last century have explained her rights very differently from the present Lords, but, as the poet says, "*the living are always right.*"

In short, the Court of Session assumed to itself again the position with regard to the Church which the Privy Council held under the Stuarts; a position which was contrived for suppressing those rights and liberties which by Scottish Presbyterianism are considered as inherent in the Church of Christ and unalienable from her, and the possession of which the Church considered secured to herself after long warfare in the revolution settlement, and guaranteed by the treaty of union.

Before the Court of Session sustained the "amended conclusions" of Mr. Young's summons, the prudence and conscientiousness of its judges raised the question, whether or not the case did not leave the pale of its jurisdiction. Of the thirteen judges, the large minority of five declared decidedly against sustaining the amendment. Among these were such men as Lord Moncrieff, Lord Jeffrey, Lord Glenlee, Lord Cockburn; and Lord Cockburn gave utterance to words at this stage of the matter, to which later events have given the air of a prophetic warning:—

"It is the duty of a supreme court," he said "to avoid

every collision through which it cannot see its way. Its dignity must necessarily be put into jeopardy by its exposing itself to a conflict in which it cannot explain how it is to prevail. This, I fear, is the position in which the Court is about to place itself. It is about to enter upon an untried voyage, without star or compass. No one either of the bar or of the bench can tell us what is to come next."

That which the Noble Lord feared has rapidly realized itself since the 8th of May, 1838.

Having once adopted this line, the Court of Session has, in prosecution of the principles on which it started, hardly left the Church any important act free from its control and respectively withering decisions; and now that the Church has, in this manner, step by step, been driven out of the Establishment, history can hardly yet answer the question, "Who can tell us what is to come next?"

Notwithstanding the large and important minority of objecting judges in the Court of Session,—notwithstanding the protest of the Church against such infringement of her province, and her declaration of the legitimate extent of her jurisdiction,—the Court of Session, in the majority of its members, declared itself competent to take cognizance of the case, and first decided, concerning the amended conclusions of the summons, that the Presbytery, in its refusal "to take trial of the qualifications of Mr. Young," and in rejecting him "on the sole ground that a majority of the male heads of families, communicants in the said parish, have dissented without any reasons assigned," has acted "to the hurt and prejudice of the said pursuers, illegally and in violation of their duty, and contrary to the provisions of certain statutes libelled on," especially the Act of Queen Anne.

After the House of Lords had confirmed the decision, the Court of Session further decreed, "that the Presbytery is bound and adstricted to make trial of the qualifications of Mr. Young, and if, after trial and examination, he should appear qualified in the judgment of the Presbytery, that the Presbytery is bound and adstricted to receive and admit him as minister of Auchterarder according to law."

The Church,—for she felt herself, as a whole, responsible in the matter,—obeyed the decree in all points of a civil nature. She gave up all claims to the "*jus devolutum*," as also to the temporalities of the place; she instructed her Presbyteries to suspend the operation of the Veto Act for this year (1839), hoping for an arrangement of the affair with the Legislature. But she persisted in refusing to take Mr. Young on trial, and (what must have been followed) to ordain him and force him on the congregation, maintaining, that this was contrary to duty, justice, honour, and the conscience of the Church.

The supporters of the Church of Scotland offer the following defence of the propriety of her resistance:—In Scotland, the four supreme courts, the fiscal, criminal, civil, and ecclesiastical, are co-ordinate; each possesses its own province, and none is allowed to infringe the province of another. Thus, the Court of Session has exclusively civil matters to decide on, and has no power over spiritual ones at all.

One and the same cause may, however, appertain to several of these courts, since it may enter into their several provinces. A marriage, for instance, may be considered valid by the Court of Session as regards the civil rights connected with it, whilst the Church, in an ecclesiastical respect, may censure it. Could the Court of Session overrule such ecclesiastical censure? Just so, the Church

might exclude Mr. Young from the charge of Auchterarder without being entitled to overrule the views of the Court of Session in decreeing to him the temporalities of the place. This distinction of the spheres of jurisdiction of State and Church, producing the less collision of interests the more distinctly it is made, is necessary and wholesome both to Church and State. Each of the courts is bound to grant to the others an acquaintance with its proceedings, but only in order to draw from them that which peculiarly belongs to their own provinces, and by no means to enable them to erect themselves as umpires between the other court and the party or parties before it. If the Court of Session has to take cognizance of a case, in which the Criminal Court has passed a judgment, and if the Lords of Session are of opinion that the Criminal Court has not rightly pronounced, has neglected formalities which it ought to have observed, or observed such ones as it was not allowed to introduce, the Court of Session has no right to alter or annul their judgment; this act belongs to the Court of Appeal, which, for these two courts, is the House of Lords, and there the matter ends. The Court of Appeal to all the Church courts is the General Assembly, where, in spiritual matters, the cause constitutionally shall "take end as they decern and declare." (Stat. 1567, 1592, 1690.)

In our present case, the Court of Session had no right to set aside the decree of rejection of the Church, but should have contented itself, if it considered this decree as unjust towards Mr. Young and Lord Kinnoul, *to deprive it of civil consequences;* this would have been within its province. And if, besides this, it also lay within its province (as is by no means the case) to act as watch over the other courts, and prevent them from exceeding their bounds, it would have had no opportunity here for exercising this function, since the question, whether the Church should

admit or reject a candidate for ordination, is purely in the jurisdiction of the Church herself; and although the grounds of rejection of the Presbytery in such case might not appear valid to the Court of Session, it had to remember, that it was not the Court of Review of the Church courts, and should have sent Mr. Young to the General Assembly, where the matter ought to have ended.

Whether or not this arrangement of law administration in Scotland be good or bad, is not here the question, but whether or not it really exists; and as this cannot be denied, and as, in all spiritual matters, the General Assembly is the head of the Scottish Church, and, as head of the Scottish Church, is not a civil court, since the Scottish Church is not a civil corporation, but a national branch of the Church of Christ on earth, it follows, that no essential alteration of her constitutional relation to the State can be effected by a declaration of the Court of Session or even of the House of Lords. The Church owes honour and obedience to these courts (as the authorized organs of the State) in all matters of civil law; in spiritual matters, on the other hand, the Church has to honour them also as the authorized interpreters of the relation which the State conceives to exist between itself and the Church, but she has not to obey unconditionally, but *under a condition;* and this condition is, that notwithstanding an infringing decision, she considers it possible to remain an Establishment. If, however, she find the point of difference of such fundamental and imperative importance, that in the case of the State's not granting a satisfactory resolution of it, she feel herself in conscience bound to make the greatest earthly sacrifices rather than surrender her spiritual independence as a Church of Christ, then she must resolve on the honourable course which the Church of Scotland has

pursued. First, she would have to try if she could not obtain a satisfactory modification of the decree of the civil court by recourse to its court of appeal (the House of Lords). Failing in this, she would have to pray the Legislature for a remedy. If this be not granted, she would have to sacrifice everything to preserve her conscience. And even if any one, who has been educated in another Church, or who conceives that philosophy teaches him to look on such a proceeding as narrow and morbid, be of opinion that the Scottish Church has taken up an erroneous view as a matter of conscience, he must, nevertheless, esteem the honest truthfulness with which she has obeyed her conscience. If to this, it be replied, that this is the case with fanatics of all kinds, who, as history teaches us, maintain this obstinate tenacity of their principles through every extreme, we must grant, *in abstracto*, the truth of this remark. The writer cannot enter any farther into this objection; he only observes, in conclusion, that it will have no weight, as applied to the Scottish Church, as long as rational minds exist who can discern, in spite of all superficial similarity, between him who is inspired and him who is intoxicated, between him who adheres to great principles from clearness of view and firmness of character, and him who clings to fixed ideas from weakness of mind.

The Scottish Church perceived from the beginning that she would have to defend at all hazards her principle of spiritual independence, as defined in the history of her constitution. Therefore she showed no disrespect to the Court of Session in allowing it no control in her spiritual affairs, but only respected her own duty.

These general views may be thus applied to the particular case.

The civil court had to protect the civil rights and interests of the *patron* and of the *candidate*.

The civil questions relating to the patron in such cases are such as these:—Whether or not he be the lawful patron; whether or not he have presented at the right time; whether or not he have forfeited the right of presentation *pro hac vice* on account of delay in making a duly qualified presentation, and so forth. If on such an occasion, say the defenders of the Church, a Church court is summoned before a civil court, it appears, properly speaking, not in the quality of a spiritual court, but in that of a party at civil law, as it were in that of a board of guardians of the temporalities, or in that of a patron, inasmuch as it claims the *jus devolutum*, etc., and implicit obedience is to be given to the decree of the competent tribunal, whether this decree appear to the Church just or wrong.

Lord Kinnoul could therefore have charged the Presbytery with having laid claims to the *jus devolutum*, believing to have presented Mr. Young at the proper time as a qualified presentee. The Court of Session could then have found, according to its conscientious understanding of the statutes, that, as non-acceptableness constituted no disqualification, Lord Kinnoul had not forfeited his right of presentation, and the Presbytery had not acquired the *jus devolutum*. Lord Kinnoul might then have refused to present a *second* candidate, since to him, as to the Court of Session, non-acceptableness appeared no legal ground of rejection of his candidate before trial. But if the Presbytery on its side felt itself in conscience again obliged to refuse to intrude Mr. Young on the congregation, Lord Kinnoul could have had recourse to the General Assembly.

Here, either the matter would have ended, or, as there could be no doubt of the decision of the General Assembly,

it might have been the occasion of the Legislature's framing a law by which the present relation of the two independent courts (the civil and ecclesiastical) under which such collisions were possible, might have been constitutionally regulated and improved; but the Legislature alone could do this, and it would little become the Court of Session, as one party in the cause, unconstitutionally to usurp the position of controller of the supreme Ecclesiastical Court in spiritual matters.

If Lord Kinnoul thought fit to present no new candidate, the duty was incumbent on the Presbytery, in watchfulness over the spiritual interests of the congregation, themselves to send a minister, as the people were not to be suffered to remain without cure of their souls; but they would have done this, not *jure devoluto*, but as temporally supplying a necessity; and whether after the decision of the Court of Session, the patron, the candidate, or the widow fund should have received the emoluments of the place, or however else the temporalities of the Church might have been to be disposed of in such cases, the Church would have had no right to decide. This, however, would have been certain, that the minister during Mr. Young's lifetime would have had *no* right to the emoluments.

If the Court of Session, say the most reasonable and moderate of the defenders of the Church of Scotland, had thus remained within its own province, all the mischief committed would have been avoided. An incalculable series of cases would have arisen, in which the spiritual act of confiding the office could not have been followed by the civil act of granting the emoluments. This would have been a sad but imperative motive to the Church to reconsider her rightful and lawful, but obnoxious measure, while she was yet in a good understanding with the State, and before the rise of any bitter war of principles, and so to

alter it, that all interests might have been easily satisfied. It would have been not only just and lawful, but conciliatory and prudent on the part of the State's courts, to have remained within this line in its proceeding against the Church. And the guardians of the law themselves committed an unlawful infringement into a province not their own, when not content with performing that which belonged to them, namely, to refuse temporal things, they undertook that which did not belong to them, namely, to command spiritual things.

It was certainly the duty of the Court of Session to protect the rights of the patron; but what is the great injury which the Veto Act inflicted on the patrons? Did it take from them the right of presentation? By no means; the minister finally admitted is at all events their presentee. An *absolute* patronage is an absurdity. Conditions must always exist, under which alone the Church can be obliged to accept a presentee. These conditions, one may say, restrict the patrons to present only from a certain class of individuals who are capable of fulfilling them. Suppose, now, that the "*acceptableness*" of the Veto Act be an entirely new condition; then the injury done to the patron's rights would have been that of restricting him to the presentation of such candidates only as would have been willingly received by the congregation; but such ones as could only be placed over a congregation by overruling forcibly their conscientious reclamation, would not have been henceforward in his power and right successfully to present. Is this a subject for a patron to complain of? Every honourable patron is rationally supposed to bear this principle of Non-intrusion in his own conscience; and if so, would find nothing in the Veto Act which would restrict his rights. But if patrons are to be found who have more at heart to serve certain personal

ends than to consult the spiritual wants or even the just wishes of a Christian congregation, then to every Church one might most heartily wish an efficient check against the rights of unprincipled patrons.

It is alleged, that the patron is more capable of judging of the spiritual wants of the congregation than the congregation itself; and that the wishes of a congregation are often governed by such caprice, that it is prudent to give them no occasion for indulging this. In Scotland the former allegation is not generally applicable, especially where that happens, which is so common in Scotland, that the patron is not a member of the Scottish Church, or that he is an absentee. The latter allegation belongs to the province of discipline, which is to be exercised by the Presbytery, and not by the patron.

But *is* the "*acceptableness*" an entirely new condition? In the former section the writer has endeavoured to prove that it is not. The "Call" existed; that it has been a thousand times unconscientiously treated by the Moderates does not deprive the Church of the right of treating it conscientiously at the time of re-awakening of her public sense of duty.

But it is said, the Veto Act is not the Call. At any rate, it is *formally* a new enactment; and the Church ought not to have framed such a measure independently. It has already been shown that the Church *bonâ fide* could suppose to have the approbation of the State for her proceedings; and it must appear to every unprejudiced mind that the Veto Act was a much more mild and unpretending measure than the simple revival of the actual Call would have been. But even admitting that the Church has in this respect not acted with sufficient regard and consideration towards the State, (which, however, is not really the case,) it does not follow that she has acted

unlawfully. In the following section the writer will endeavour to prove that an Act of this sort was completely within the constitutional power of the General Assembly; and we must deny the legality of the Church of Scotland altogether, which is further than any one has intended to argue, if we would test the Acts of her Assemblies by the principles according to which she has been recently treated by the courts of the State. Previously to the year 1638 there were no probationers in the present sense of the word. The limitation of the presentation to probationers, and many other preliminary things requisite for taking a presentee on trial, are also introduced purely by the Church; and neither then nor later have the State or a single patron set aside a regulation which limited at once the sphere of presentable individuals far more than the Veto Law. The possession of the right of Veto with respect to presentations on the side of civil patrons is inherent in the nature of the Church as the spiritual body of Christ. The arrangement of the best way of exercising it is a question of wise Church administration. Those who deny to the Church the right of passing the Veto Act deny to her also the right of a conclusive Veto itself. Thus the security of the Church as a Church of Christ is injured; and it is against this that the Scottish Church has asserted her spiritual independence.

As concerns the presentee, Mr. Young, no one will deny that his personal rights were to be protected by the Court of Session. The proceedings of the Church against him have been publicly and emphatically denounced as a "*frightful persecution*," against which, "*as a British subject*," he had a right to be protected. May God defend us from priestcraft and spiritual tyranny, whatever form they may assume!

Let us examine this accusation narrowly and determine its worth.

As a British subject, Mr. Young has doubtlessly the general right of demanding protection of his particular and personal rights from the State; but what these particular rights are does not appear from the mere term, "British subject," but must be submitted to a closer examination. Now, the rights which were here to be protected were those of a probationer of the Scottish Church. When Mr. Young received from his Presbytery his license to preach the Word of God from the pulpits of the Church of Scotland he received one spiritual privilege from the Church, and not from the State. If to this be replied: "Not from the Church *in abstracto*, but from the Church as established by law in Scotland;" and if on this account it be maintained that the State indirectly concurs in the matter, the answer is just. But what follows? That the State has not only to protect the rights of Mr. Young, but also those of its Established Church in relation to one of her probationers.

What are now these mutual rights?

The Church gives the license to the probationer and thus opens to him the possibility of practising a profession which must be supposed dear to him, and also of obtaining means of living. The probationer, on the other hand, solemnly engages on his side—

"To submit himself to the *discipline* and *government* of the Church.

"To subject himself to the several judicatories of this Church.

"To the utmost of his power to assert, maintain, and defend the doctrine, worship, *discipline*, and the government of the Church by Kirk Sessions, Presbyteries," &c., &c.

We find that since the year 1582 part of this discipline

of the Church has been the Act of Assembly, which is guaranteed and still unrepealed, and which hitherto has never been lost sight of by any civil court, by virtue of which no candidate or minister shall seek to acquire a place "by any absolute gift, collation, or admission by the civil magistrate or patron, by letters of horning, or whatsoever other means than is established by the Word of God and Acts of the General Assembly, under the penalty of excommunication."* It was the highest of the judicatories, to obey which Mr. Young took oath, namely, the General Assembly, which passed the Veto Act. Through this Act a law of the Church, which the Church regarded as one of its fundamental ones, was to be carried into effect. Of the Church so constituted, and under conditions so framed, Mr. Young had the position of *Licentiate*, by which he now strove to obtain an office in the Church.

Mr. Young has entertained no scruples of conscience to obtrude himself with force, if necessary to his end, on a reclaiming congregation, to keep this congregation for years without minister or religious administration, to disturb the peace of the Church, and sow dissension throughout the land: and for what object? To protect his so-called civil rights. To protect them against whom? Against the Church, from whose hands he received the title to claim these rights. To protect them by what means? Through means which subject him, by virtue of the guaranteed laws and ordinances of this Church, to the penalty of excommunication, through which his title, and all the civil rights based on this title, vanish of themselves. Ought the civil authorities to have encouraged such a mode of proceeding? Ought the State not to have esteemed the Church too

* In the following section the occasion of this Act will be related; and then it will be seen how perfectly it applies to Mr. Young's case.

highly as its Establishment to give it in prey to the mean private interests of a contumacious candidate, even if the dead letter of the law should have been on his side?

The Church of Scotland has maintained, under unworthy treatment, a worthy deportment throughout the affair; but the greatness of her sacrifices contrasts strikingly with the causes which have forced her to make them. The Church had the power to punish Mr. Young's open infringement of the law of 1582 with excommunication. Would not the civil authorities in this case have been consistently obliged to declare this act of excommunication null and void; to declare that Mr. Young must nevertheless be taken on trial, and, if he were found qualified in life and literature, that he should be inducted as minister into a Church which had solemnly declared that he was without her pale? To proceed consistently with their other Acts they must have done this. This would only have been a rather more clear and striking manifestation of the confusion which had been created by overlooking the veritable limits of jurisdiction of different courts, and which really exists in all the later decisions against the Church.

When the Church determined not to direct her ecclesiastical censure against Mr. Young, but to leave him a title, under the protection of which he was busied in defying and disturbing her, she acted worthily and, at any rate, in a spirit which savours little of the "*frightful persecution*" with which a distinguished lawyer has charged her.

The Auchterarder Case and the House of Lords.

It is with the greatest respect to the highest judicial tribunal of Great Britain, that the author humbly declares, that to the best of his judgment he cannot conclude other-

wise, than that the Scottish Church is free from the charge which the decision of this tribunal has brought against her.

The Auchterarder case came before the House of Lords by the appeal of the Church. Since the House of Lords only busied itself to pronounce whether the decision of the Court of Session was right or wrong in the particular case before them, it had neither occasion nor intention, it would appear, to give an exact authoritative definition of the constitutional provinces of jurisdiction of Church and State, and it had no intention of defining the sphere of action of a Presbytery of the Scottish Church. But every one will admit, that this particular case involves, as history clearly enough proves, the most important questions of principle, and, therefore, the decision of the Lords must have depended on their views of these principles, whether expressed or implied.

The Church, on the other hand, appealed to the House of Lords, without giving a definite notice of the invasion which the Court of Session had, in its opinion, made into the province of her spiritual functions. This invasion was hitherto confined to words, though these were of a sufficiently threatening nature; however, it had not yet assumed the form of executive force, and it was certainly desirable and becoming to the Church to avoid even the appearance of over-hasty and premature defence of rights.

When the Lords had confirmed the decision of the Court of Session, the position of the Church, according to the Motion of Dr. Chalmers, introduced into the Assembly in 1839, was as follows:—

In the first place, the Church recognised, that the dispute, in reference to the civil fruits of the benefice of Auchterarder, was finally decided, and that she was bound implicitly to obey the decision.

Secondly, the Church felt conscientiously bound strictly to support her fundamental law of Non-intrusion.

Thirdly, the Church nominated a Committee to consider how the impending injury to the Church might be avoided, and to enter the necessary transactions for that purpose.

This impending injury consisted in the possible rise of a series of cases, in which the benefice might be separated from the charge, a loss which, in a pecuniary point of view, the Church could not sustain, and of which the ultimate effect would be virtually to destroy the position of the Church as an Establishment.

This Motion of Dr. Chalmers was received in the General Assembly with warmth and decision, by a majority of forty-nine votes, in a House of 359 members, corresponding to a majority of eighty-four or eighty-five in the House of Commons of the same period on the election of its Speaker.

The House of Lords declared that the Court of Session had decided rightly, and that it was an absolute duty of the Presbytery to take Mr. Young on trial, as after this alone it could decide whether or not he was qualified. That in refusing the trial, it refused to perform a public duty constitutionally intrusted to it, and subordained its judgment to that of the congregation, to do which it had no right. That the point was not, what the limits are of the judicial power of the Presbytery, but simply that it should perform an act, namely, the trial, which it was bound to perform before pronouncing any judgment, and which it was *unconditionally* bound to perform on a lawful presentee.

That the Scottish Church should persist, after the decision of the Lords, to which she had appealed, to refuse

to take Mr. Young on trial, is considered by some as an inconsisteney bordering on ehildishness, by others as a highly unbecoming defianee, bordering on rebellion. And yet how else could she aet, since to have done so would have required, as a preliminary step, the unqualified repeal of the Veto Act, and, in the case of Mr. Young's having sustained his trial, his ordination and intrusion on the people of Auchterarder as a subsequent step.

Let us first examine, whether the Church does or does not deserve the accusation of childish inconsisteney.

If a party striving with another, say the opponents of the Church, appeals to an umpire, he declares, by this act, his readiness to abide by the umpire's decision. Therefore, if a decision be pronounced which is unfavourable to the appealing party, and this party refuse to abide by it, he manifests that the appeal was only a trick on his part.

In reply to this, the author would suggest, that before criticising such an important step as the Church's appeal to the Lords, the bearings of the step must be clearly understood.

Before the Church adopted this step in 1838, she expressly guarded herself against recognising the House of Lords as a court having the power of overruling her constitutional position. The House of Lords interprets laws authoritatively, but it does not make them. The Church considered her independent jurisdiction in spiritual matters not only as inherent in herself, but also as recognised by the State. The decision of the Lords was an authoritative declaration, whether the State had really recognised this right, or whether the Church had been mistaken in supposing it to have done so. If the latter were the case, and if the Legislature granted no remedy, the conscience of the Church could only recognise the sad duty of resigning her position as an Establishment; but, were the former

the case, she had no intention of making the Lords the authoritative judges of what rights and duties were inherent in her as a Church of Christ. This is a summary of the views entertained by the Church in the debate on the spiritual independence of the Church, which took place in the House of Assembly in 1838, and under which the Resolution on spiritual independence was passed. Thus the Church is not guilty of childish inconsistency.

The meaning of the appeal was simply this:—The House of Lords was the court of appeal from the Court of Session. The Church hoped, that the House of Lords, removed from the locality and heat of the parties, would, from a higher point of view, recall the Court of Session into its proper sphere of jurisdiction, and also, perhaps, assign the temporalities of Auchterarder, according to Scottish law, to him to whom the Church should assign the spiritualities. This would, at any rate, have included a recognition of the legality of the Veto Act, and would have provided, for all future times, against the possibility of separating the benefice from the charge in cases similar to the Auchterarder. But if these hopes of the Church were too sanguine, she did not doubt that the House of Lords, even in denying during Mr. Young's lifetime the emoluments of the Auchterarder benefice to the minister placed there, would, at all events, recall the Court of Session from what the Church considered an encroachment on her spiritual privileges. In this case, a course remained open to the Church, by which it was possible to reconcile her temporal interests with her spiritual ones without displeasing the State, one which she could have pursued with honour. But the unconditional confirmation of the decision of the Court of Session, as also the views of certain leading Members of the House of Lords, brought to light during the course of the debate, by which it became

clear to the Church that she was deeply misunderstood, and that her best recognised rights would be from that time exposed to doubt and jeopardy, forced her to assume the position of the above-mentioned Resolution moved by Dr. Chalmers, a Resolution which was not inconsistent at all.

In short, the Scottish Church thus defends herself:—

"We submitted to the *civil court* a *civil* question—the title to the manse, glebe, and stipend of Auchterarder. The Court adjudicated beyond our submission, and decided upon the title to the *cure of souls* and the *ministry of the Gospel*. We bowed to her decision upon the first title, but rejected her decision upon the second. In the words of Dr. M., we 'split the judgment.' This, in our estimation, was the Church's duty, though in the opinion of Dr. M. it was the Church's offence."

What of the other accusation?

This is emphatically laid to the Church's charge, and may be thus expressed:—The refusal of the Church to take Mr. Young on trial, in pursuance of the decision of the civil court as confirmed by the House of Lords, is "an open resistance to the law of the land," and is in contra-distinction with the Church's own confession, which declares, that "they who upon the pretence of Christian liberty shall oppose any lawful power, or the lawful exercise of it, whether civil or ecclesiastical, resists the ordinance of God."

With respect to this quotation it may be first observed, that these words of the Confession are a two-edged sword. They speak of the opposition to a lawful power or the lawful exercise of it. Now, if it should be found that the lawful power of appointing or rejecting ministers of the Church belongs conclusively to the Church courts and not

to the civil courts, it is then the latter who "resist the ordinance of God;" and the former, by opposing the unlawful exercise of such power by the civil courts, maintain God's ordinance.

It is clear that with such vague citations nothing is advanced. The question is precisely,—What is the law of the land? The accusation against the Church definitely expressed is as follows:—"It is presumption in the Church, approaching to rebellious defiance, to maintain, after a deliberative body of such eminent men as the House of Lords has interpreted the law, that another interpretation be the true one."

The following is substantially and almost verbally what the supporters of the Free Church answer to this. They say:—

1. The jurisdiction of the House of Lords extends in this case no farther than that of the Court of Session. The House of Lords is the court of appeal from the Court of Session, and its decree gives indeed a great increase of moral weight to the decision of the latter, but no additional legal power. This point must be fully conceived and kept in view in order to understand, that what the Church might do without presumption and defiance in reference to the Court of Session, cannot be interpreted as presumption and defiance in reference to the House of Lords.

2. The Scottish Church pays due honour to the two Noble Lords who were the leaders of opinion in the Auchterarder case. She admires the talents of the one and the dignity and love of justice of the other. But she thinks she shows no want of respect in believing that this question involved principles, and pre-supposed minute acquaintance with subjects which, especially in that early stage of the controversy, might be justly supposed not to have lain within the sphere of the immediate interest of

the Learned Judges. And as they are not infallible and omniscient, no disrespect might be found in the fear that the considerations of the Noble Lords may have been involuntarily affected by English views, although the constitutional position and character of the Scottish Church is quite different from that of the English Church, and their decision might have therefore, in this case, not the presumptive weight which it would implicitly possess in a purely civil matter.

3. This fear, continue the Scotch, was not only not diminished, but increased by the circumstance that both the Noble Lords have held the case as so completely easy and clear, that both emphatically declare that they have not the slightest doubt concerning it, and do not see the least difficulty in it. In this case men, as Lords Glenlee, Monerieff, Jeffrey, Fullerton, Cockburn, in the Court of Session itself, are of an opinion directly opposite to that of these two Noble Lords. Men also of distinguished legal attainments, such as Mr. Dunlop, Mr. John Hamilton, Sheriff Monteath, a. s. f. in the General Assembly, and in the midst of the Scottish Church, are of an opposite opinion. The most intellectual, and, on that account, not the less upright men of the Church, professors, ministers, elders of the most educated classes of the nation, who understand well all the laws and privileges of their Church, although they are not lawyers by profession, are opposed to them in opinion. Must not such a case, therefore, present points which render an off-hand decision of almost elegant ease and simplicity rather doubtful?

4. And this suspicion, say the defenders of the Free Church, unfortunately is confirmed by the details. One of the Noble Lords maintained, with unhesitating confidence, that the patron in Scotland has the same position as the patron in England, although a Scottish benefice has a very

different relation to Church and State from which an English living has, which difference necessarily affects the position of the patrons. The difference between the case in which a probationer is presented, who is a person not yet ordained, and that in which a minister already ordained only moves from one cure to another, has been overlooked: but we come to a point of much more importance than these. Both the Noble Lords expressly lay down the doctrine, that the word "qualified" has in the statutes a fixed technical sense, and refers purely to "life, literature, and morals," and that the judicial power of the Presbytery in deciding whether a presentee may be admitted or not, is limited to the question whether or not he satisfies in these three points. This doctrine, say the Scotch, appears to be almost the sole basis of principle on which the decision of the Lords is founded; but this has been quite enough to excite the greatest disturbance throughout Scotland. *All parties* in Scotland agree that this principle is contrary to the recognised rights of the Presbytery, and entirely foreign to the immemorial practice of the Scottish Church. There are many things, they say, of which the Presbytery is entitled and required to judge, and which are not included under the heads of "life, literature, and morals;" for instance, whether or not the candidate have the requisite voice and health for a large parish; whether or not he understand Gallic, when this is necessary in a parish (a point hardly to be considered one of literature); whether or not his being concerned in affairs connected with certain ancient prejudicive relations of clans (of which a recent case has presented itself); and many other subjects which cannot now be cited, but which destroy this narrow arbitrary sense of the word "qualified." The Moderates, as well as the Free Church, reject this view; and in this point Dr. Cook's motion on spiritual independence, in

1838, coincided with that of Dr. Chalmers. Even the Dean of Faculty rejects this principle, and in his well-known letter, finds no other way of getting out of embarrassment than by making the surprising assertion that the Noble Lords have never maintained such a thing. These assertions which have fallen from those Noble Lords, are the very cause of those doubts, to remove which the recent "Church of Scotland Benefices Bill" has been passed. The Noble author of this Bill himself declared, in the warmth of the debate, that those principles of a certain Noble opponent destroyed the Scottish Church. It is very natural, say the defenders of the Church of Scotland, that certain Noble Lords have zealously protested against the Bill being considered as a "*declaratory*" one, since in this case it would have appeared, what it really is, a formal acknowledgment, and an official declaration, that certain misconceptions of Scottish Church law had been made in the Auchterarder case. The Noble author of the Bill was therefore considerate enough to remark, that the contents of this Bill have nothing to do with the decision of the Lords in the Auchterarder case, since in this decision the subject was purely the question whether or not the Presbytery be bound unconditionally to take the lawful presentee on trial before judging of his admissibility or non-admissibility. This remark of the Noble Lord, continue the Scotch, was certainly well intended; but it is not tenable. For the duty of the Presbytery to take a presentee on trial is not, as the Noble Lord himself knows, an *absolutely* unconditional one. There are certain *preliminary* conditions, of which the Presbytery has to judge *previously* to taking him on trial; for instance, whether or not the candidate be presented by the lawful patron; whether or not he be a probationer of the Scottish Church; whether or not he have attended one of the Scottish

Universities, according to the rules of the Church, or, failing in this, have been resident in Scotland six months previously to his presentation; whether or not he have the requisite age, many other requisite certificates and testimonials, and so forth.

There exist, therefore, preliminary conditions, which must be fulfilled before the Presbytery take him on trial. *One* of these conditions has been from of old the *Call* by a congregation. This condition had been unconscientiously treated by the rulers of the Church themselves in many many cases, to the deep regret and prejudice of many a congregation; but it had never become legally invalid, and it was still the right and duty of the Presbytery to observe it. The Veto Act was nothing else but an instruction to the Presbyteries as to by what they should recognise the validity of the Call, namely, the absence of a protest by the majority of the male heads of families in full communion with the Church; and as this was failing to Mr. Young, the Presbytery of Auchterarder was not only not bound to take Mr. Young on trial, but, on the contrary, legally forbidden to do so. It had no more right to do so than it would have had if the congregation had desired him for their minister, but Lord Kinnoul had not presented him. The Presbytery, therefore, declares that "he is not *qualified*" for the charge of Auchterarder. To this the Court of Session replies, You must take him on trial in order to discover whether or not he be qualified. The Presbytery answers, We know already that he is not qualified, because he fails in this preliminary condition, which, according to Scottish law, is essential to his qualification for the pastoral charge of any parish. To this the House of Lords gives the additional refutation,—No, this is not part of the qualification of a presentee; the qualification consists only in such and such elements, points

purely founded on the personal qualities of the man, and not on the opinion of others (the parishioners) concerning his qualities, etc. Is it not then clear that the decision, whether or not it were a constitutional duty of the Presbytery to take Mr. Young on trial, is dependent on the sense assigned to the term "qualified presentee," by lawful Scottish Church practice? The Free Church closes her defence and remonstration by saying,—Since it is notorious that the sense attached to this term by the House of Lords is too restricted, we cannot conceive that we incur the charge of disrespectful presumption in maintaining *that the decision of the House of Lords on our appeal requires reconsideration.*

An impartial reviewer of these things will grant that the Church was in a very unhappy position. This position had been produced, on the one hand by a deed of her own (the passing of the Veto Act), to which no blame can be attached; and, on the other, (to express it as inoffensive as possible), by a tragical complication of circumstances and misunderstandings. How willingly, instead of lamenting the frowns which she has met with in her misfortune, would the Church have thanked the Legislature for the generosity of granting her a measure which might have restored peace without demanding the sacrifice of conscience and honour. It is true there have been transactions with intent of framing a legislative remedy, and it would be very unfair to disconnect the most grateful acknowledgment from such names as Aberdeen, Argyll, Sinclair; but, on the other hand, it would be just as unfair to blame the Church for considering it against her conscience to consent to any of the offered remedies, except that of the Duke of Argyll, which met with disapprobation from the other party.

The Church is charged with having by her obstinacy preserved her unhappy position, whilst an outlet from it has always been at hand. That is to say, her adversaries maintain that the moment that the civil authorities declared the Veto Act to be illegal, the Church ought to have repealed the measure, even if she considered it herself lawful.

But let these accusers put themselves in the place of the Church. She had not passed that law for the pure pleasure of legislating, but it was forced from her by the most pressing circumstances; and these circumstances continued to exist, and would on the repeal of the Veto Act have come into action with redoubled vigour. The duty of the Church towards herself, towards the nation, and towards the State demanded such a measure, and continued to demand it. It is true it would little become a Protestant General Assembly to imitate Popish claims for infallibility, but to maintain the gravity and dignity of her legislation before her people is certainly a point of sacred duty, since her authority and effectiveness is intimately affected by it. Could the Church stamp as a blunder to-day that which she had declared yesterday to be a fundamental law of her constitution?

The Church of Scotland is of a determined and active character, severe and sharp, like the forms and the atmosphere of the mountains of the land. Such characters experience the extremes both of favour and enmity. Thus it is with the Scottish Church; she has the most faithful children and the most bitter adversaries. However, her intrinsic merits, in spite of all asperity of form, in spite of all violent language of individuals, renders kindness towards her a duty of justice. The Scottish Church is, in the opinion of the writer, not to be blamed for having refused an unconditional repeal of the Veto Act. Her opponents

had driven her into such a position that the simple repeal of the Veto Act and the surrender of two vital principles had become one and the same thing. It is highly creditable that the Church would rather surrender her temporalities than her conscience, and would repeal the Veto Act only under the condition that the spiritual rights of her people and the spiritual independence of the kingdom of Christ on earth, according to the conscientious understanding of the Scottish Church, around which the controversy revolved, should be guaranteed.

The point which is maintained against the Church from the side of the State with the greatest appearance of justice, and in which the judgment of the civil court had not, as it had in its definition of the sense of the word "qualified" the whole Church against it, but was only opposed by the majority in her, now demands especial attention. It is the following:—

"It is said, that according to the constitution of the Scottish Church, the examination and rejection or admission of the candidates has to rest with the Presbyteries of the Church. By the Veto Act a right is conferred on the congregations, by which these interfere with the judgment of the Presbyteries, and, in certain cases, prevent it altogether, and that thus the rights of the Presbyteries are infringed on. But that, what is a *right* of the Presbyteries with regard to the Church is a *duty* to be performed with regard to the State; for the State, on establishing the Presbyterian Church, acknowledged a Church in which the decisions of the *Presbyteries* concerning the admissibility of candidates, not those of the *congregations*, were considered as lawful, and that in suffering an infringement of this right the Church suffered an injury to be inflicted on the interests of the State."

Such is the objection expressed according to the view of the State. Expressed according to the view of the minority of the Church as opposed to the then majority (the present Free Church), it would run as follows:—

"The government of the Church is confided by Christ exclusively to the office-bearers of the Church. The examination and appointment of ministers belongs to the government of the Church; in granting to the congregations this important part of Church government she not only permits the infringement of a *right*, but is guilty of the dereliction of a *duty* imposed on her by her Divine Head."

The present Establishment of Scotland, in rejecting the principle of Non-intrusion, and giving up the principle of spiritual independence in the sense of the Free Church, has acquiesced in the views of the State on both these points in adopting the Church of Scotland Benefices Bill. Thus we may consider that there is in this moment no expressed difference of view between the State and the Established Church concerning the constitution of the Church and her relations to the State; and thus *one* answer may be jointly given to both forms of the objection.

The Free Church may commence her defence in the words of one of her most zealous opponents:—

"The principle of the constitution of Presbytery, as established by law (says that influential Scottish lawyer in his letter), is, that *all* matters respecting the religious interests of the parish, connected with the settlement of the person so nominated, and all questions as to his qualification shall be decided by the Church court as a part of the government of the Church, which the State chose to establish and recognise as its Church."

Well and good. Now it can hardly be denied that the blessed or not blessed labour of a minister in a congrega-

tion is one of the first, if not the very first, of the "*matters respecting the religious interests of the parish*," and that this, according to human calculation, decidedly depends on the confidence and affection which the minister enjoys among his congregation, at least in a Church as the Scottish. If, therefore, the Presbytery were to see that the condition and disposition of a congregation were such that, in all human probability, the pastoral relationship would be far otherwise than the religious interests of the parish demanded, it would not only have the *right*, but incur the *duty* of rejecting the presentee. But this discretionary power is part of the Church government, which is to be modified by *the Church* according to exigences, since the Presbyteries, holding it from Christ through *the Church*, are responsible for its exercise under Christ to *the Church*, and may be appealed from to *the Church*, as represented in the General Assembly. It is a mis-statement that it be an expressed condition on the part of the State at the establishment of the Scottish Church that the Presbyteries, and they alone, for ever, and under immutable conditions, are to judge of the presentees; and it is only contrived for raising the appearance of the Church's having broken the conditions of her establishment in placing a share in the Veto-right in the people. If the Church, for instance, were now to find it expedient to her internal government to examine all her candidates before the General Assembly, (as the Wesleyans in England do before their Conference,) and to ordain them only through the Moderator for the time being, (as the Wesleyans through their President,) so that the single Presbyteries had no more to do with the matter, she would doubtlessly, with regard to the State, have a right to do this, and could by no means be accused of acting against the conditions of her Establishment. The General Assembly has therefore the constitutional right of

framing regulations for the ecclesiastical functions of the lower courts of the Church and of her individual office-bearers. The Veto Act was a regulation of this kind, framed by the General Assembly, and even approved of expressedly by a large majority of the individual Presbyteries, to give instructions to the Presbyteries in the exercise of their discretionary power. In this Act *the Church* declares, under the form of a general rule, how she desires her judgment on the fitness of candidates in the case of their non-acceptableness to the congregations to be in future acted upon by the Presbyteries. The latter, in giving efficacy to the Veto Act do not resign their right of judgment in respect to the congregation, but exercise it in every several case in conformity with the general judgment of the Church, expressed through her organ, the General Assembly, which, instead of deciding separately on each case in which the Presbytery found non-acceptableness in the presentee with regard to the congregation, gave a general rule to the Presbyteries how to form their judgment in every case of the kind. This is not a hierarchical proceeding, but, on the contrary, it was rather a hierarchical proceeding in the Moderates, in indulging the unrestrained arbitrium of the Presbytery with the decision, whether the rights and wishes of a Christian congregation should be heeded or not. But as it is under the Veto Law, the people exercise their right without the Church neglecting her duty. The Presbytery ascertains the state of the congregation with regard to the settlement about to be made, in order to discover whether or not those circumstances exist, which the Church has pronounced to be in her judgment "*injurious to the religious interests of the parish;*" and if the Presbytery find them to exist, they give effect to the *judgment of the Church*, a judgment with which they have specially declared their own to be identified

by the operation of the Barrier Act. If every well-disposed Scottish congregation constitutionally has this right of consenting and dissenting according to the Act of 1690, as the Free Church believes it has, the Church *does* its duty in recognising and protecting it, and is not backward in fulfilment of her duty. The right of judging of the gifts requisite to her office-bearers rests with the collective Church. The Moderates, however, argue as though the Church consisted in the Church courts and office-bearers alone; but this is far from being a Scottish principle, or even a Protestant one. The office-bearers and the people together are *the Church in reality*. The right of Veto is inherent in *the Church*, and the people has its participation in it. As to the form in which the Veto is exercised by the Church, whether concentrated in one point or divided into several, whether placed here or there, is a matter of wisdom of the government of the Church, who has perfect freedom in this matter, with relation to the State, as long as its measures do not exceed its constitutionally-granted powers and infringe no civil rights.

However, this last assertion might lead to doubts, which must be set at rest before the foregoing statements can be entirely freed from doubtful validity.

Much is spoken, in the course of this controversy, of "spiritual matters" and of "civil matters." The former are said to belong to the province of the Church alone, the latter to that of the State. The decisions concerning the former are said to belong conclusively to the General Assembly, whilst those concerning the latter are said to belong conclusively to the Court of Session.

The Church complained of the State having infringed her spiritual rights, whilst, on the side of the State, we have heard it said, again and again, that the State had not the slightest intention of interfering in really spiritual

matters, nor that it had interfered in them at all. But, say the opponents of the Church, it is difficult to distinguish, by a general and infallible test, what is *spiritual*, and what is *temporal*, or *civil;* and it becomes doubly difficult to do this in the case of an Established Church. There arises a kind of things, which have a mixed character, which are connected with both Church and State, and about which it is difficult to decide exactly whether they belong to the province of the Church or of the State. However, they continue,—and this is the arbitrary conclusion of their reasoning,—however, in all cases in which a dispute arises concerning the limits of these provinces, the State has to decide conclusively, and the Church to obey implicitly.

Let us hear an expression of this argument, which has the weight of the highest authority.

Sir James Graham says, in his celebrated letter:—"Whether a particular matter in dispute is so entirely spiritual as to fall exclusively within the jurisdiction of the Church courts, or whether it involves so much civil right as to bring it, to a certain extent, within the jurisdiction of the civil courts, may often be a difficult question, but it is a *question of law*, and questions of law are decided in the *courts of law*, and *questions of jurisdiction* are also decided there, all subject to an appeal to the House of Lords, which," &c.

A chain of arguments, even if they be purely abstract, seldom fail, if they unite clearness and warmth of expression with an appearance of consistency of principle, to produce an imposing effect. But all depends on whether or not the particular case, in reference to which the arguments are adduced, is really settled or even touched by them. The writer humbly declares, that in his opinion the arguments of that celebrated letter do not reach the point at issue.

Nevertheless, they have made, especially in England, such an impression, that people have easily contented themselves with saying, "Whatever the case of the Scottish Church may be, it is evidently so complicated, that it is doubtful which side is in the right; and now that the highest judicial court has pronounced decision, it is mischievous folly in the Scottish Church still to hold out against this decision."

Meanwhile, if we examine the case itself, the following observations might appear founded:—

Some persons thought it to be convenient to make a distinction between *spiritual* and *ecclesiastical* matters, and to give the appellation, *ecclesiastical*, as well to certain things which are in themselves civil, but are connected with spiritual matters, as to such which are in themselves spiritual, but to which civil matters are attached. Very well, there is no objection to this; only do not let us confuse real distinctions in the nature of things by the use of a wavering terminology, and raise by it the appearance that it had been *ecclesiastical* rights only, not pure spiritual ones, which the State had interfered in and was entitled to interfere in.

A spiritual matter is quite distinct in its nature from a civil one, and cannot be mistaken for a civil matter, nor a civil one for a spiritual one. By human compact (between State and Church) they may become connected with each other, but they are, nevertheless, essentially distinct from each other, and can never, by mere coexistence, form a third class of a new nature. For instance, the "*presentation of a candidate*" is a right which relates to the Church; and if you will call it an ecclesiastical right, well and good, but it nevertheless remains a civil right, being exercisable by persons who do not belong to the respective Church at all. Again, the admission of a presentee to the ministry

in the Church is a spiritual thing, although this carries with it, according to the law of Scotland, the temporalities of the place.

The writer thinks, that it would not perhaps be difficult, either in theory or practice, to distinguish decidedly between spiritual and temporal or civil matters. This is not the place for theorizing, but we may be allowed to put the question, Is there no simple test to decide whether or not a certain point comes under the jurisdiction of the State or the Church courts? Perhaps the following might suffice:—

"That which a court is entitled to enjoin on another court to perform, it must be able to perform itself in a case of urgency, the inferior court acting only as deputy to the superior."

Now, the Presbytery refuses to examine and ordain Mr. Young as minister over a certain congregation. Is the Court of Session itself in a position to examine and ordain him? Obviously not. It can only put Mr. Young in possession of the temporalities. The King, Lords, and Commons together, cannot make any man a minister in the Church of Christ. Why not? Not because their power is at all limited in its proper province, but because this does not lie in the province of their power. Thus, therefore, the ordination appears a purely spiritual thing, the performance of which belongs to the Church; and since the State has recognised the Church, and even established her, it must certainly leave her conscientious liberty in doing that which inherently and constitutionally lies in her responsibility alone. By a similar process of reasoning, it appears to the author, every single case of disputed jurisdiction might be decided.

In concluding this almost juridical portion of his treatise,

the author will take the liberty of presenting, in the words of one of the ablest defenders of the Scottish Church, Mr. Dunlop, a short sketch of the views the Church entertains respecting her constitutional position, and the claims which she founds upon it, and which the writer purposes to justify, historically and legally, in the last section of this treatise.

1. The Church asserts, that her courts *are courts;* that they are recognised as such by the State, and are possessed of a certain jurisdiction, in the exercise of which they are as independent of, and as free from control by, the Court of Session, as are the Court of Justiciary and the Court of Exchequer; and that, in regard to the subjects of that jurisdiction, the inferior Church courts are subordinate *exclusively* to the General Assembly, just as the Court of Session is subordinate *exclusively* to the House of Lords.

2. She admits that the whole civil privileges of the Establishment, and the emoluments of its ministers, and all the civil, private, and personal rights of its individual members, flow entirely from the State, and that all questions as to the right to these are absolutely and conclusively subject to the determination of the civil courts.

3. She contends, on the other hand, that the power to admit to the functions of the holy ministry, and confer the pastoral charge of a congregation, together with the whole spiritual government of the Church, flows, not from the State, but from the Divine Head of the Church, and that it exclusively and absolutely belongs to the office-bearers of the Church.

4. She conceives that this power was recognised by the State to be in the Church, by the various statutes ratifying the "*liberty*" of the Church, and, in a particular manner, by the Act 1592, which established the Presbyterian Church with full power "to put order to *all matters and causes*

ecclesiastical, according to the discipline of the Kirk;" and expressly declared, that a previous Act, asserting the jurisdiction of the King and the King's courts, should "*noways* be prejudicial, nor *derogate any thing* to the *privilege*, that God *has given* to the spiritual office-bearers in the Kirk, concerning heads of religion, matters of heresy, excommunication, *collation* or *deprivation* of ministers, or any such like essential censures, specially grounded and having warrant of the Word of God." She further conceives, that this inherent power was once more recognised by the State (1690, 1707,) in the *statutory* ratification of her *Confession of Faith*, which declares, that "The Lord Jesus, as King and Head of the Church, has therein appointed a *government* in the hands of *Church officers*, DISTINCT from the *civil magistrate*;" that the civil magistrate "*may not assume to himself the power of the keys*;" and that "it belongs to Synods and Councils ministerially to determine controversies of faith and cases of conscience," and "to set down *rules* and *directions* for the better ordering of the public worship of God and *government of his Church*."

5. She conscientiously believes, that in refusing to ordain any one to the holy office of the ministry, and admit him to the pastoral charge of a congregation against the will of the Christian people, heads of families, in communion with the Church, who shall solemnly declare that they are actuated in their dissent "solely by a conscientious regard to the spiritual interests" of themselves and the congregation, her courts have been acting only within the jurisdiction inherently belonging and recognised by the State to belong to them as Church courts, in a matter falling within that "government" of the Church, declared, by the Confession of Faith (which is ratified by statute), to flow from the Head of the Church, and to be "distinct from the civil government;" and she cannot

acknowledge, that the circumstance of the State having attached a civil consequence to their proceedings in this matter, can possibly change their spiritual character, any more than attaching the civil consequence of the loss of a benefice to deposition from the office of the ministry, for heresy or immorality, can alter the spiritual character of that act. She admits, that the supreme civil power can, at its pleasure, withdraw altogether the whole civil privileges belonging to the Establishment, and that the Court of Session can competently determine, in every particular case, as to the right to the possession of a particular benefice, and grant or withhold it from the individual admitted by the Church to the pastoral office, according to its own judgment, as to whether the requisites required by law to entitle him thereto have or have not been present; but she denies the power of any civil tribunal to *coerce her courts* in the execution of the spiritual powers of ordaining and admitting to the pastoral charge, or of any of the spiritual powers derived from her Divine Head.

She therefore believes, that the Court of Session, in prescribing to them their duty in the exercise of this their spiritual jurisdiction, has gone beyond the civil province, within which alone it has any authority, and has encroached upon the jurisdiction of the judicatories of the Church as recognised by the State.

These are the views and claims of the now Secessional Church of Scotland. Mr. John Hamilton says, with regard to them:—

"Some persons may, perhaps, at first be startled by the announcement of a power which is represented to be superior to all human control, and may be apt to think that such pretensions are dangerous and portentous. But

the unnecessary alarms of such individuals will be speedily allayed when they are reminded, that the uncontrollable power thus asserted on behalf of the Established Church is nothing beyond the power universally conceded, without a shadow either of fear or of reserve, *to every Dissenting Church and body of Dissenters throughout the kingdom;* and it need not, therefore, surprise any one to find, that the State has not withheld from its own approved and adopted Church rights and privileges which it freely concedes to every other. Indeed, a moment's reflection may satisfy every man that the existence of this underived power, within the Church itself, is involved in the very conception which one naturally forms of a Church of Christ, and that such a power derogates in nothing from the full and absolute power of the secular magistrate; for the Church's power relates solely to the *religious* offices and duties of its own voluntary members, extending to no person or thing beyond them; and even as it respects its own members, what is called the *power* of the Church involves not a shadow of secular authority and no compulsive or coactive force whatever; applying itself solely to the *conscience and religious sentiments of its members, it exhausts itself upon these, and there is end of it. Sua naturâ*, therefore, the Church appears to be a community essentially *distinct from the State,—having its own purposes and modes of action,—entirely different from the ends and modes of action of the temporal power;* and the truth will be found to be, that all alarms regarding the spiritual power proper to any Christian Church, are substantially identical with that most groundless alarm, which, at the very first promulgation of our holy faith, the Jews attempted to insinuate into the mind of their secular ruler, when they told Pilate that our blessed Lord

assumed to himself the office of *a King*, and that, therefore, he would not be Cæsar's friend if he let this man go. But the answer, which Divine wisdom then made to the charge, was a conclusive answer to every fear, and is equally appropriate in every age of his Church,—'*My kingdom is not of this world.*'"

SECTION V.

HISTORICAL PROOF OF THE LEGALITY OF THE CLAIM OF THE CHURCH FOR INDEPENDENT JURISDICTION IN SPIRITUAL MATTERS.

First Period. 1560—1592.

After the Convention of the Estates of Scotland had declared, in 1560, that the Reformed faith was the religion of the nation, Queen Mary persisted in refusing the Royal assent for seven years, so that, till 1567, the Scottish Church existed as the Church of the people without being the Established Church of the land, and during this period she governed herself, and administered for herself under the acquiescence of the State.

This rise of the Church has been decisive regarding her relation to the State, for the State being afterwards induced to establish the Church, found her already formed and organized, and thus we may account for the independence and ecclesiastical power which the Church has possessed from the commencement of her legalized existence, and of which the destruction by the one party and the defence by the other have formed the main feature of her history.

Let us now follow the order of time and history of the legal documents on which the rights of the Church are founded.

Acts of 1567, c. 2, 3, 6, 7.

The Acts of this year

(C. 2.) 1. Legally abolish the jurisdiction of the Pope.

2. Ratify the confession of the Church. (C. 3.)

3. Declare the clergy and people who confess the Reformed belief alone constituting the true Church of Christ in the kingdom. (C. 6.)

4. Declare "That it is statute and ordained by our Sovereign Lord, with advice of his dearest Regent, and Three Estates of this present Parliament, the examination and admission of ministers *to be only in the power of the Kirk* now openly and publicly professed in this realm; the presentation of laic patronages always reserved to the just and ancient patrons." And "if the Superintendent (who then had provisorily the functions of the present Presbyteries) refuses to receive and admit the person presented by the patron, as said is, it shall be lawful for the patron to appeal to the superintendent and ministers of that province where the benefice lies (that is the provincial Synod, "the Synod of the bounds"), and desire the person presented to be admitted, which if they refuse, to appeal to the General Assembly of the whole realm, by whom the *cause* being decided *shall take end as they decern and declare.*" Act 1567, c. 7. (Vol. iii., p. 23.) Anent the admission of them that shall be presented to benefices having cure of ministry.

Remarks on this Document.

I. The Church of Scotland then recognised by the State, and which was in her principal features entirely the same as that of the present day, was thoroughly *Presbyterian.* The office of the superintendent, which afterwards devolved on the organized Presbyteries, had none of the autocratic powers of a bishop. The superintendents with their temporary powers were commissioners of the General Assembly, to which they had yearly to render account, and which gave and took away their powers, as it thought proper. The Assembly itself consisted of Presbyters, or elders, that is to say, teaching elders, or ministers and

ruling elders, and it is undeniable that the Scottish Church then possessed and exercised as much an independence in spiritual matters as it could manifest itself in the position of a Church in her infancy.

II. In the document in question this principle is decidedly established as far as it relates to the point of the present controversy. The "*examination and admission of ministers*" was "*only in the power of the Kirk.*" The lay patron might certainly present, but the superintendent might conscientiously "*refuse to receive and admit.*" The patron might appeal from him to the Synod, and from this to the "*General Assembly of the whole realm;* but with this the cause *takes end, as they decern and declare;*" and of an appeal from the latter to a civil court, whatever name it might bear, WE FIND NO TRACE WHATEVER. It is untrue to history to maintain that the superintendent was restricted in his right of Veto to those tests of unqualifiedness of the presentee, which are supposed at present to be included in the peculiar sense of this word, and therefore it is not historically true that the conclusive decision of the General Assembly only bore this restricted signification. And yet it is not to be denied that the decree in the Auchterarder case depends on that false but strenuously supported supposition. At that period there were no scholastic examinations of ecclesiastically educated probationers, but the Church courts had to take into consideration the entire character and qualifications of the person presented to them, and compare these with the entire complication of circumstances among which they were about to place him, and from this comparison they made their decision. On this account we find all expressions relating to the decision of Church courts, from the present document down to the Church of Scotland Benefices Bill, conceived in a wide and general form. Thus we find that the Church

courts are to judge "the cause," "the affair," "the whole affair," &c., and it is in these wide and general views that the Church has a right conclusively to determine without appeal whether the presentee can be admitted or not.

III. During the regencies all possible means were tried to give the superintendents the power of bishops, and thus to undermine Presbyterianism. But the Church introduced in 1578 a complete and detailed view of the economy of the Presbyterian Church into the Book of Policy, or, Second Book of Discipline; and in this the office of a bishop in the sense of prelacy is disavowed, and in 1580 it was authoritatively abolished by the General Assembly, and its functions given to the Presbyteries, which were rapidly organizing over the whole country.

1580.

We now come to consider the *Book of Policy*, or *Second Book of Discipline*.

The authority of this standard of the Church has been already discussed in a general manner, and were it necessary the objections against it might be examined in detail and proved to be perfectly untenable. The first chapter of this book is entitled, "Of the Kirk, and policy thereof, and wherein it is different from the civil policy;" and the jurisdiction of the Church is shown to extend, not merely over word and sacrament, but over its whole organization and regulation as an institution, which is essentially distinct from the State. We there read:—"The policy of the Kirk, flowing from this power (the power of Jesus Christ) is an *order or form of spiritual government* which is exercised by THE MEMBERS APPOINTED THERETO BY THE WORD OF GOD, and therefore is given IMMEDIATELY *to the*

OFFICE-BEARERS, by whom it is exercised to the weal of the whole body."

"This power and policy ecclesiastical is *different and distinct in its own nature* from that power and policy which is called the civil power, and appertains to the civil government of the commonwealth.

"This power ecclesiastical flows immediately from God, and the Mediator, Jesus Christ, and is spiritual, having no temporal head on earth, but Christ, the only spiritual King and Governor of his Kirk."

"The *magistrate* commands external things for *external peace* and *quietness* among his subjects. The *minister* handles external things only *for conscience cause.* The magistrate handles external things only, and actions done before men. But the spiritual ruler judges both, inward affections and external actions in respect of conscience, by the Word of God. The civil magistrate craves and gets obedience by the sword and other external means; but the ministry by the spiritual sword and spiritual means."

1582.

The Affair with Robert Montgomery.

(Cf. M'Crie's "Life of Melville," vol. i., p. 183, seq.)

A certain case which was debated before the General Assembly in 1582, will distinctly show to the kind reader the extent of what has been granted to the Scottish Church in 1567; how this was in danger of being re-assumed by the State, but how the Church had ultimately the good fortune triumphantly to maintain her rights. This case had itself had much influence on the ecclesiastical law of Scotland, and its details throw much light upon many recent proceedings. It is the case of

Robert Montgomery, in which the present contest about the limits of jurisdiction had almost its prototype.

King James I. desired to bestow on his favourite, the recently created Duke of Lennox, wealth suitable to his rank. For this purpose he thought of making use of the revenues of the archbishopric of Glasgow. But in order that these revenues might be claimed, it was necessary that an archbishop should exist. As the Duke himself could not be an archbishop, a minister in Stirling, of the name of Robert Montgomery, came forward to be appointed to this place by the King, on condition of drawing only a certain proportion of the yearly revenues of the archbishopric, so that the remainder should belong to the Duke as Titular Archbishop. The King sent a message to the General Assembly, in 1581, requesting it to admit Robert Montgomery as Archbishop of Glasgow. The title of archbishop had indeed not been formally abolished by the Church, but only that of bishop; and the latter had been so by the Church alone, whose independent power James cordially hated.

The General Assembly of course found it impossible to give effect to this very extraordinary request, and instructed the Presbytery of Stirling to prevent Montgomery from taking any steps in a matter which threatened to throw the Church into serious embarrassment. But Montgomery, setting at nought the obstacles thrown in his way by the Presbytery, procured an injunction from the secular power, requiring the Presbytery of Glasgow to admit him as Archbishop. Quite similar was the modern proceeding of the Court of Session towards the Presbytery of Auchterarder concerning Mr. Young; and as the latter in modern times, so the former at that time, refused to "*receive and admit.*" The cause pended till the year 1582,

and the new Session of the General Assembly was approaching. Montgomery feared the censure of this body, and not without reason. In order to gain a move in advance of it, he resolved on a proceeding quite similar to that adopted by Mr. Clark in the Lethendy case, against the Presbytery of Dunkeld.* He obtained from the Privy

* *The Lethendy Case.*—Mr. Clark was appointed by the Crown to a place of Crown patronage as assistant of the still living incumbent *cum spe succedendi.* On the moderating in the Call he was rejected under the operation of the Veto Law. At first he contented himself with the decision of the Church courts; but as within a few months the incumbent died, he resolved, only without co-operation of the patron, on the same means as Mr. Young. The congregation could not remain without a minister. The Auchterarder case pended from year to year. The Church, therefore, proposed Mr. Kessen, whom the congregation willingly received. Mr. Clark obtained an interdict against the Presbytery from the Court of Session, which "prohibited it from farther proceeding in any way to give effect to the presentation in favour of the said Andrew Kessen," forbidding the latter to take possession of any of the temporalities of the place. To the latter, of course, the Court of Session had a perfect right, which was not the case with regard to the former. The Commission of the General Assembly declared that "*admission to a pastoral charge*" is entirely an ecclesiastical act, and instructed the Presbytery to ordain Mr. Kessen "*upon the Call in his favour,*" not "*on the presentation and Call together,*" and this in order that no contest might arise about the temporalities, to which the Church could of course make no claim if the Auchterarder case should be decided unfavourably. The Court of Session granted a new interdict in the most comprehensive form, which not only forbade Mr. Kessen to take possession of the temporalities of the place, but also to undertake the charge itself. The Presbytery, in pursuance of the instructions of the General Assembly, did not obey the injunction as far as regards the spiritualities, on the ground of this point being beyond the jurisdiction of the secular court, and accordingly ordained Mr. Kessen. This proceeding of the Church was looked on as open rebellion; although closely examined nothing more has been done either on the part of the secular court or of the General Assembly than to proceed anew on the same principles which were conflicting in

Council an interdict against the General Assembly, forbidding it to proceed in any manner against him in the affair of the bishopric. The General Assembly could as little recognise this interdict as authorized and binding, as the present Presbytery of Dunkeld could do so with regard to the interdict of the Court of Session; and it is remarkable that Dr. Cook praises the proceedings of the Church at that time, in the debate on the Independence Resolution (1838), in the following decided words:—

"The Church rebelled against this; and it would have been unworthy of the name of a Church if it had not done so."

Montgomery was threatened by the General Assembly with deprivation and excommunication if he did not confess his repentance of his conduct and the resolution to alter it. He appeared before the General Assembly, confessed that he had "*heinously offended*," and promised, on oath, to take no farther step in the affair, and to retract what he had already done. The General Assembly, knowing his character, saw that they could not trust him, and instructed the Presbytery of Edinburgh to excommunicate him if he should break his word. At the same time it passed the

Resolution of Assembly, 1582.

"That it is conformable to the Word of God and most godly acts of ancient councils, that no man pretend to ecclesiastical function, office, or benefice, by any absolute gift, collation, or admission of the civil magistrate or patron, by letters of horning, or whatsoever other means,

the still undecided Auchterarder case, only with this distinction, that in the Lethendy case the *whole Church*, even to the extreme Moderates, have been unanimous in their opposition to the presumption of the Court of Session.

than is established by the Word of God and acts of the General Assembly, and hitherto ordinarily used within the Reformed Kirk of Scotland, under penalty of excommunication."

Even at the risk of interrupting too much the historical tenor of this relation, the writer cannot deny himself two remarks on this document, which could nowhere find so good a place as the present. The *first* is, that this Act is still in legal force, and if taken by the letter, would render Mr. Young's proceedings against the Church punishable by law. This was the Act alluded to in the preceding section, where Mr. Young is said to have rendered himself liable to the severest censure of the Church. The *second* is, that the comparison between this Act and the Veto Act is interesting and important; namely, at the conclusion of it we find stated, that this Act shall not be "prejudicial to the laic patrons and their presentations, until the time the laws be reformed according to the Word of God." From this we may conclude that this Act, like the modern Veto Act, was intended to work conjointly with the patronage system, and was not an attempt to abolish the patronage of lay persons, a measure which the Church would have no right to pass without consent of the State, but that it was calculated to secure the Church from being forced by the secular power to act contrary to her principles. If the Directory of 1649 shows on the one hand that the spirit of the Veto Act was not unprecedented, the document in question, on the other, shows the same concerning the right of passing it.

The wretched Montgomery, influenced by the Duke of Lennox, and impelled perhaps by his own ambition, again renewed his agitation, and was excommunicated. The

Privy Council declared his excommunication null and void, just as in modern times the Court of Session espoused the cause of the suspended minister of Strathbogie.*

The General Assembly hastened its meeting, and before it could be summoned before the Privy Council for defiance and breach of the law of the land (as the Court of Session recently summoned the Church courts before itself), it drew up a remonstrance against these "*encroachments on the jurisdiction of the Church*," (just as was done by the General Assembly of 1842,) and named deputies to deliver this remonstrance to the King in Council. In this document the General Assembly expresses itself respectfully, but clearly and firmly, in the following terms:†—

"That your Majesty, by desire of some counsellors, is caused to take upon you a spiritual power and authority which properly belongs unto Christ, as only King and Head of the Kirk, the ministry and execution whereof is only given unto such as bear office in the ecclesiastical government in the same. So that in your Highness's

* The Presbytery of Strathbogie was not so unanimous as those of Auchterarder and Dunkeld, but seven of its members decided against five to side with the Court of Session against their spiritual superiors. After long delay of the painful measure, the General Assembly could at last not act otherwise than suspend the refractory ministers. Notwithstanding this, the latter considered themselves, on the authority of the secular power, as the real Presbytery of Strathbogie, and in this capacity they intruded, in a truly disgusting transaction (the Banner of Aberdeen, from the 21st of January, 1841), Mr. Edwards upon the congregation of Marnoch. It must also be said of this case, that nothing new has been done on either side which was not the natural result of the principles in conflict, but that in the same the destructive effect of these results to all ecclesiastical rights, order, and decorum, was more strikingly exhibited.

† "The Booke of the Universall Kirk of Scotland," etc., ed. by Alex. Peterkin, Esq.—Edin., 1839, page 256.

person some men press to erect a new Popedom, as though your Majesty could not be full king and head of this commonwealth, unless as well the spiritual as the temporal sword be put in your Highness's hands; unless Christ be bereft of his authority, and the two jurisdictions confounded which God has divided."

Andrew Melville was the person who presented this document to the King in Council. When it had been read, Arran, the brother of the Duke of Lennox, and a great favourite of the King's, exclaimed with flashing eyes, "Who dares subscribe these treasonable articles?" "We dare," said Melville, calmly; and stepping forward to the table, he took a pen from the hand of a clerk and signed his name. The other deputies followed his example. The King yielded. Montgomery found his proceedings vain; and the independent jurisdiction of the Church, especially as regards the collation and deprivation of ministers and the exercise of Church discipline and censure, was thus practically and virtually recognised.

It was certainly not from a conviction of the scriptural authority of the Episcopal forms of Church Government, or of its intrinsic excellency, that James and the Stuarts in general adhered to it, but from political views. The celebrated saying of James in Hampton Court, "no bishop no king," is typical in this respect; and all his methodically clever steps against Presbyterianism were so firmly connected with his strivings for unlimited supremacy, that he has really contributed to identify the struggle of the Scotch for their Church with their contest for their political rights and liberties. This character of primary bulwark and pledge of national rights has since never been lost by the Scottish Church. The Scottish Church is therefore, to use a political expression, a Conservative Institution,

and whoever narrowly examines the recent affairs from this point of view, will find much cause of surprise that this great feature should have been overlooked. The Scottish Church has not, like the English, arisen through the influence of the monarch, or in co-operation with the ecclesiastical dignitaries of the country; but she has been brought into existence by the religious energy of the people, and adhering to the written Word of God without compromise and with pertinacious firmness, has she struggled through two centuries in the rapidly altering positions of conqueror and conquered. On this account the jealous affection the Scotchman bears towards her and her privileges is inextinguishable. The State, during that period, has been placed in all possible relations to her, from the bitterest enmity to complete recognition and esteem. The Church, on the other hand, has been driven a hundred times by necessity to consider as conscientiously and clearly as possible, what belongs to Cæsar and what to God, in order to render to them their relative dues. Thus the Scottish Church, in the opinion of the writer, has arisen to fulfil an important mission in the Protestant world, which will be the more generally recognised the more the principles of the Scottish Church question are understood. If the Reformation of the sixteenth century has a definite principle by which the Reformed Church is thoroughly distinguished from and contrasted with the previously existing Roman Catholic Church, this will not only manifest itself in this or that particular doctrine, in this or that element of worship, etc., but in the pervading spirit of their whole systems, and consequently, also, in their relation to the State. The problem is still to be solved of finding the true position of the Reformed Church towards the State. In Scotland the germs of sound principles are

sown for the practical solution of this problem, and we are perhaps warranted in drawing from the signs of the times the conclusion that the hour is at length at hand when history will take up this great question once more, and settle this unfinished element of the Reformation.

The writer does not mean to say that other Protestant branches of the Church of Christ might take the Scottish Church in this respect as an absolute model. On the contrary, the clearer she is understood, the clearer will be recognised how entirely national she is, and consequently how untransferable in her detailed form. But the more clear, also, will the universal (Catholic) element in her appear; and this it is which will extend its influence over the whole Protestant world.

The plan of some Scotch Barons, known under the name of the Raid of Ruthven, to snatch the young King by force from the hands of notoriously mischievous favourites and advisers, which had received the uncalled-for and blameable approbation of part of the clergy, roused the enemies of the Church anew against her, and gave the King new weapons, by which he was enabled to get the Parliament to pass, in 1584, the so-called

Black Acts.

Of these it has been said, by one of the leaders of the Moderate part, that "*they destroyed the Church, they left it no liberty or independence.*" But in the writer's opinion, the Moderates exhibit an indistinctness of vision in not seeing that the position with regard to the Church which they have supported the State in taking is of such a nature, that, to say the least, all guarantee for the liberty and independence of the Church has vanished. We have only

to alter the expressions of the Black Acts to suit the altered circumstances of the present time, and this will be very evident.

Act 1584, c. 2.

This Act ordains that the King and his successors, "by themselves and their councils, are, and in time coming shall be, judges competent to all persons, his Highness's subjects, of whatever estate, degree, function, or condition that ever they be, spiritual or temporal, in *all matters* wherein they or any of them shall be apprehended, summoned, or charged to answer to such things as shall be enquired of them by our Sovereign Lord and his council." Act 1584, c. 2. (Vol. iii. p. 292.)

Remark.—The Lords of Session have now taken the position of such a "*council*," and as "*judges competent*" for a spiritual court, deciding over "*spiritual matters.*"

Act 1584, c. 4.

This Act is directed against the Presbyterian Church courts and their jurisdiction as they were organized for twenty years, and "not yet allowed of and approved by his Majesty and his three estates of Parliament;" and deprives of force "all judgments and jurisdictions, spiritual or temporal, which are not approved by his Highness and his said three estates convened in Parliament;" and ordains them "to cease in time coming until the order thereof be first seen and considered by his Highness and his said three estates convened in Parliament, and be allowed and ratified by them." Act 1584, c. 4. (Vol. iii. p. 283.)

Remark.—The view which has served as basis in the recent decisions concerning the Scottish Church, that the Church established by Law is a "creature" of the State, and subject to the laws enacted by the State in the same manner as any other "civil corporation," is that taken by

this Act. This view consistently leads to the conclusion that all rights and powers of the Church courts flow primarily from the State, and that therefore the supreme law courts of the State are courts of review of the General Assembly.

Act 1584, c. 20.

Act 1584, c. 20. (Vol. iii. p. 303.)

This Act directs that the bishops, and other such persons as are *appointed by the King* as commissioners, "shall and may direct and put order to all matters and causes ecclesiastical within their dioceses, receive presentations, and appoint ministers," altogether things which had been performed by the Presbyteries.

Act 1584, c. 5,

Act 1584, c. 5. (Vol. iii. p. 293.)

Directs that all ministers who are convicted before the Royal commissioners of certain transgressions were to be "deprived as well from their *functions in the ministry* as from their *benefices.*"

Remark.—If the power "*to direct and put order to all matters and causes ecclesiastical*" rests ultimately with the State, Acts like the above, passed in the present day, would neither be impossible nor unjustifiable, though they might be imprudent. Why should not the State even now, if it saw expedient, withdraw from the Presbytery the power given to it, and appoint certain commissioners to exercise it; why should Royal commissioners or courts in our time have to make a distinction between "*the functions in the ministry*" and "the benefice" (the spiritualities and temporalities)? In a word, the State has acted through its courts of law in the late contest virtually in the same views of the Church as those of King James.

The following may represent the position of the Church

at that time. She had, in 1578, laid down a complete model of her Presbyterian economy in the "Book of Policy." The principal features of this economy had been already sketched in the "First Book of Discipline," and it was at that time to a great extent in practice. The Church had organised for herself her constitution and government: and who else was there to give them to her? The State or the ecclesiastical dignitaries? Both were estranged from her and hostile to her. The Church of Scotland was therefore placed by Providence in a position in which she was obliged to exercise a right essentially inherent in the Church of Christ, namely, that of framing her own constitution according to the Word of God and her spiritual nature, and of governing herself under her divine head. For this she had not only not received the sanction of the State, but the Government and a fraction of the nobility were decidedly hostile towards her. The Church adopted, in 1580, the "Book of Policy" as a standard, and all her ministers signed it: and from 1581 to 1583 Presbyterian Church courts were rapidly organizing over the whole of Scotland. Now came the Black Acts and declared all these proceedings null and void; they established the Episcopal constitution of the Church and the unconditional supremacy of the Crown in spiritual as well as in temporal matters, and declared the Church courts to be illegal and even treasonable assemblies. The following alternative therefore arose: Either the principles of the Black Acts were to be carried into effect, in which case the Church of Scotland must have ceased to exist, or the principles of the "Book of Policy," and the Church founded on them, were to gain the ascendancy, in which case the Black Acts must have been repealed, and the constitution of the Presbyterian Church legalized by the State. The decision of Providence declared itself in favour of the latter. The conditions

which the Church had to demand at this juncture, in order to obtain the legalization of her constitution, were the three following:—

1. To be freed from the government of bishops and Royal commissioners.

2. The Presbyterian Church courts to be recognised both in their liberty of meeting and in the legitimacy of their ecclesiastical jurisdiction.

3. This ecclesiastical jurisdiction to be supported by the recognition of the independence of the Church in spiritual matters, that is to say, the power of the Church in its legislative, as well as in its administrative exercise, (of course, subject to the placet or the Veto of the State,) to be expressly recognised as no branch of the secular power, and the principle to be recognised, that the Sovereign is not the head or governor *of the Church.*

All these claims were gained by the Scottish Church through the

Act of 1592, c. 8,

Act 1592, c. 8. (Vol. iii. p. 541, seq., Act for abolishing of the axtis contrair the trew religioun.)

Containing the ratification of the liberty of the kirk, of General and Synodal Assemblies, &c.

I. *General View of this Document.*

This Act is justly called the charter of the Church of Scotland, and is to the present day in full force. It was certainly repealed in 1662, but was re-enacted in 1690. It contains in itself the acts of 1567, 1581,* and the "Book of Policy," in the sense in which it

* The writer would here supply an omission which he has made while considering the Act of 1567. He has to observe that another Act of 1567, c. 12 ("Anent the Jurisdiction of the Kirk"), after having granted to the Church the jurisdiction over doctrine, sacraments, and discipline, further declares, "that there be no other jurisdiction ecclesi-

1567, c. 12. (Vol. iii. p. 24.)

has been explained, and on its own part it has been embodied in the Revolution Settlement and the Act of Security. This document perfectly legalizes, in the opinion of the writer, the views which the General Assembly of 1842 submitted to the Government in its celebrated document, entitled "*Claim, Declaration, and Protest,*" &c.

Even the tone of the Act in question is characteristic of the position in which the Church was placed. The Black Acts "confer," certain powers on "commissioners," who "were to be constituted by the King;" but the document in question does not *constitute* the Presbyterian Church courts, nor *confer* certain rights and powers on them, but it *recognises, ratifies, and approves* them and their authority and independent spiritual jurisdiction, *as they existed already,* partly by virtue of expressed ratification, partly by virtue of acquiesence of the State in what appeared as necessary consequences of that ratification.

II. *View of this Document with regard to the three Conditions which the Church had to demand for the legalization of her Constitution.*

1. The Black Act concerning the restoration of the Episcopal authority and the empowering of Royal commissioners, is said in our document "*to be expired in itself,* and *to be null in time coming and of no avail, force, or effect.*"

2. The legality and authority of the Church courts are

astical acknowledged within this realm other than that which is and shall be within the same Kirk, or flowes therefrom, concerning the premises;" and that the above Act of 1581, c. 1, entitled, "Ratification of the Liberty of the true Kirk of God and Religion, with Confirmation of the Laws and Acts made to that effect of before," re-enacts and confirms those two Acts of 1567, as on its own part it is re-enacted and confirmed in the Act of 1592. Act 1581, c. 1. (Vol. iii. p. 210.)

recognised; and, on the other hand, "*all and whatsoever Acts, laws, and statutes, made at any time before the day and date hereof, against the liberty of the true Kirk,* JURISDICTION, *and discipline thereof,* AS THE SAME IS USED AND EXERCISED WITHIN THIS REALM," are repealed and annulled.

3. It is declared, concerning the supremacy of the King and his council, that it "shall noways be prejudicial nor derogate anything to the privilege that *God has given* to the spiritual office-bearers of the Kirk, concerning *heads of religion,* matters of heresy, excommunication, *collation and deprivation of ministers,* or any such like essential censures specially grounded and having approval of the Word of God." In elucidation of the latter point, the writer allows himself to add the following three remarks:—

First Remark.—The Scottish Church maintains decidedly, to use a technical figure, the separation of the temporal and spiritual swords, or, in other words, the separation of the power of the sword from the power of the keys. The former of these she considers as given to the civil magistrate, the latter to the office-bearers of the Church, both committed and separately entrusted to their several holders by God. The State, under James, maintained that the spiritual authority vested in the office-bearers of the Church had sprung from the State itself as the sole sovereign and ultimate source of all power on earth. On the other hand, the Scotchman maintains the divine origin of the power of the Church as distinct from the power of the State. The form of constitution and government of the Church in its essential features is to him neither a matter of expediency nor an object of human ordinance and will, but like the revealed doctrine, (though minor in importance,) a matter of divine appointment. Now this doctrinal view of the origin and form of Church Government (incorporated in the "Book of Policy," afterwards more dogma-

tically detailed in the Confession) was *ratified by the State* in the document of which we are treating, in terms to the following effect: that "*God has given to the spiritual office-bearers of his Kirk*" certain spiritual privileges, which are not to be infringed by the State. And again, that when the supremacy of the King and his councils (the State) is spoken of nothing shall be understood prejudicial to the divine privilege of the Church as she is represented by her office-bearers.

Second Remark.—This "*privilege given by God to the spiritual office-bearers of his Kirk*" is then more minutely determined. It concerns "*heads of religion*, matters of heresy, excommunication, *collation and deprivation of ministers*," &c. By *collation* is here meant the appointment to the *pastoral office or charge*, as by *deprivation*, the deposal from *this office*, not from the temporalities. Both these are acknowledged as belonging to the Church, not as granted by the civil power, but as a right given to her by God, that is to say, as being inherent in her just like the control of her doctrine, the adjudication on heresies, the exercise of spiritual discipline, &c. The right of the Church over the *collation* and consequently, also, over the *non-collation* of candidates for her offices, in pursuance of her decision on their qualifiedness or non-qualifiedness, is ranked in our statute in the same class of rights as her right of decision on points of doctrine; and one of these rights stands or falls with the other. It is hard to conceive that the Court of Session should be able to set aside the statute on one of these points and not equally be able to do so with regard to the other. Suppose, for instance, that a minister were (as happened a few years ago) to be deposed for not preaching the doctrine of election in the severe sense of the Calvinistical creed. According to the principles recently established, he might very well appeal, like Mr. Young,

to the Court of Session; and the Court of Session would in his case be just as well entitled to find that the Church interpreted her Confession of Faith to the prejudice of the civil rights of the minister, as it was in Mr. Young's case to find that she interpreted her "Book of Policy" to the injury of Mr. Young's civil rights.

Third Remark.—It is of importance to keep in mind that the provisions of the document in question were framed in fresh recollection of Robert Montgomery's affair. In that very affair an attempt was made to compel the Church to grant the "*collation of an ecclesiastical office*," which was just as much opposed to her fundamental laws as the principle of intrusion. In that affair the censure of the Church (the excommunication) was just as unwarrantably over-ruled by the Privy Council as to-day the suspension of the Strathbogie ministers by the Court of Session. Hereby we may conclude that the State of that time was perfectly aware of the extent of its concessions to the Church in granting this statute; and, on the other hand, that the Church knows perfectly well how much she has received by that statute, and how much has been recently arbitrarily taken away from her.

III. *View of this Document as regards the Auchterarder Case.*

The statute in question re-enacts, as has been already remarked, the Act of 1581, together "with the whole particular Acts therein mentioned, which shall be as sufficient *as if the same were here expressed.*"

Now, among the Acts "therein mentioned" is the Act of 1567, which places "the examination and admission of ministers" *in the power of the Kirk*, inasmuch as it provides, that a patron, whose presentee shall have been rejected, can appeal from the superintendent (afterwards the Pres-

bytery) to the Synod, and from this to the General Assembly, "by whom the cause being decided, *it shall take end as they decree and declare.*" In what we gather therefore from the Act of 1592 concerning the presentation on the part of the patron, and the collation on the part of the Church, the following two points are to be well recollected:—

1. That the "collation and deprivation of ministers" are recognised as belonging *to the jurisdiction of the Church* by a similar right to that which she has of judging of heresy, refusing the sacrament, or even of excommunication.

2. That it gives the Church (General Assembly) the *final* decision as to whether the presentee be admitted or rejected.

Under the supposition that this is recognised and guaranteed, the statute of 1592 ordains, "all presentations to benefices to be directed to the *particular Presbyteries** in all time coming, with *full power* to give collation thereupon, and to put order to *all matters and causes ecclesiastical* within their bounds, *according to the discipline of the Kirk*,† providing the foresaid Presbyteries be bound and adstricted to receive and admit whatsoever *qualified* minister be presented by his Majesty or laic patrons." The latter provision, if we judge by the whole tenor of the Act, means nothing more than that *patronage remains established*, and that qualified presentees must be received *from the hands of patrons*, not chosen by the congregation or Presbytery. But as to the *qualifiedness* of the presentee, the technical explanation of the term newly brought into vogue, is neither just nor warranted; and at any rate, in

* Not to the bishops or Royal commissioners, as the Black Acts had provided.

† Not according to certain powers granted by the State, like those possessed by those Royal commissioners.

the case of a difference of opinion between the patron and Presbytery on the subject, the Church (General Assembly) has a final and uncontrolled veto.

That this view of the statute is no gratuitous interpretation, but is the legitimate explanation of it, such as it was understood by the Church and State of the time, will appear clearly in the observations on the following period of the history of Scottish Church legislation in this treatise, where the State will be shown to have desired its repeal precisely *because it bore the above-explained sense.* For the present, however, the following circumstance will render its meaning indisputable:—It is not hard to conceive, that after granting to the Church the right of judging of the qualifications of a presentee, and of exercising a conclusive veto on his collation, cases would arise in which the Church (General Assembly) would confirm the rejection of a presentee by a Presbytery on grounds which did not appear to the patron or the civil court to be included in the sense of the Act. To "*find and declare*" this, according to its conscientious understanding of the statute, and with regard to the civil questions in the affair, obviously lay in the province of the civil court. Now, in the event of such cases happening, a *legal remedy* had, of course, to be framed, to indemnify the patron for the *pro hac vice* suspension of his rights. A remedy of this description was given in the

Act 1592, c. 9. (Vol. iii. p. 542.)

Act of 1592, c. 9,

which ordains, that in the case of the rejection of a presentee, "*qualified*" in the opinion of the civil court, the patron have the right "to retain the whole fruits of the benefice in his hands," a proceeding very different from that of forcing the Church "*to receive and admit*" the presentee.

Now, it is true, this statutory remedy must naturally have become inactive on the extinction of patronage itself. After the revival of patronage, it was modified by new regulations, in such a manner that the Church, in cases of disputed settlement, could lay no claim to the fruits of the benefice, neither could the patron retain them in his hands, but they were devoted to the "Widow Fund," or to certain other purposes connected with religion or education. It must be admitted, that the laws of patronage exhibit a defect in this point; this was the point, by the redress of which the Legislature, at the right time, was able and called upon to avert, and to avert most easily, the whole disastrous controversy. But never can it be admitted, that the injury sustained by a patron by the defect of the law, warrants the law courts of the State in injuring the Church, by violation of *her* rights and laws, in order to indemnify the patron.

The general conclusion,

then, which we arrive at in the end of the first period of the Scottish Church Legislation, is that,

1. The power of conclusively deciding on the qualifiedness or unqualifiedness of a presentee for a pastoral charge, and of admitting him or rejecting him accordingly, is an inherent right of the Church, or, in the Scotch expression, belongs to that "*privilege which God has given to the office-bearers of the Church.*"

2. The Church is, in her Presbyteries, "*bound and adstricted*" to receive the presentations from *the existing patrons*, in as far as the candidate presented is "*qualified.*"

3. This obligation of the Church courts is not unconditional, but takes place "*according to the discipline of the Church.*"

4. The Church has to know and to declare what belongs

to the "*discipline of the Church*," according to the Word of God, and the State has the full right of either establishing it by statute or not to do so.

5. The State HAS recognised and established, that the Church has just as independent and conclusive a right of judging concerning the "*collation or deprivation of her ministers*," as concerning "*heads of religion, matters of heresy*," &c.

6. If the Church appear to the State, in any particular case, to decide wrongly, and to declare a presentee to be "*unqualified*," from grounds which the secular court does not recognise as contained in the statute, the secular court has not the power of erecting itself into a court of review over the General Assembly, and of intruding its interpretation of the statutes on the Church, neither has the Church the power to intrude her interpretation and decision on the secular court and the State; but both decisions have their effect in different directions, and, therefore, without collision: the Church does not receive the temporalities from the State, and the State does not injure the spiritualities of the Church. The State has thus a natural and efficient guarantee against any obstinacy or arbitrariness on the part of the Church, and the Church has a natural and efficient motive to act in conformity with the known views and regulations of the State agreed upon. Therefore, in the ordinary course of affairs, and under mutual goodwill, the general conditions of peace and harmony are fully provided (notwithstanding any differences in individual cases), and a disruption like that which has recently happened can only take place when this constitutional relation between the two powers, Church and State, is overlooked, as has been done lately by the civil courts.

Such were the position of the Scottish Church and the

legislative enactments concerning her jurisdiction at the end of the sixteenth century. It remains now to be seen, whether or not the Church has, at a later period, forfeited this position and her statutory privileges and rights.

Second Period.

From 1592 *till* 1640.

The concessions contained in the Act of 1592, made to the Church by a Government inimical to her, were, in general, wrung from this Government, and not granted with good will. The next ten years, therefore, exhibit nothing but a series of attacks, on the part of the State, to resume these concessions by force or cunning. The moral disgust with which we must contemplate all these attempts is, however, repaid by *one* consideration. It is this: When the Erastian lawyers and clergy of the present day seek to weaken the concessions of 1592, the unmistakeable public *declarations* and *deeds* of the next ten years effectually controvert them. All disputes concerning the sense in which the Act of 1592 was understood by both parties, concerning how much was conceded in it by the State to the Church, and how much was wrung through it by the Church from the State, are set at rest by an examination of the means by which the State afterwards attempted to resume its concessions.

The King, having found force and intimidation powerless means to mould the Church to his liking, thought to overcome her by the seducing allurements of covetousness and ambition. He held forth the advantages which would accrue to the Church from having her interests defended by bishops, who joined to an imposing outward appearance the privilege of a seat and vote in Parliament. Who that understands human nature can be surprised that the King found

individuals in the Scottish Church who looked on this with approbation? But the Church, as a whole, may justly boast, that she acted with the same decisiveness against the intermeddling of civil power with spiritual things with which she has ever opposed the Church's intermeddling with earthly pomp and civil and political affairs. From this time till the Revolution we recognise, as a prominent feature of the Scottish Church history, that the revival of prelacy has been always accompanied by the revival of the supremacy of the State over the Church, which supremacy, at last, is maintained to be an inherent right of the Crown, whilst, on the other hand, the restoration of Presbyterianism has always been followed by the destruction of that supremacy. Thus, in appearance, the preference of one form of Church government over another, the Episcopal over the Presbyterian, or *vice versâ*, was the point at stake, while, in reality, the point of contest was, to use a Scotch expression, which doctrine should prevail in the land, that of the dependency of the Church of Christ on the supremacy of the head of the State, or that of the Headship of Christ over his own spiritual kingdom the Church.

Act 1606, c. 2. (Vol. iv., pp. 281—284.)

Act 1606, c. 2.

The King obtains from Parliament the re-establishment of bishops in their civil estate, and he is again recognised in this Act "to be sovereign monarch, absolute prince, judge and governor over *all persons, estates, and causes*, both spiritual and temporal, within the said realm."

Act 1612, c. 1. (Vol. iv., p. 469, seq.)

Act 1612, c. 1.

This Act ratifies the Resolutions of the corrupted General Assembly of 1610, by which every minister at his induction is obliged to take an oath of allegiance in a form,

in which the King is styled "the only lawful supreme governor of this realm, as well in matters spiritual and ecclesiastical as in things temporal."

There is a point in this Act which is of great interest as regards the present struggle, and which merits to be brought particularly into notice. It is ordained, that the presentations of the patrons shall be made to the *Bishop*, and, in case of his rejecting the candidate, an appeal shall be made to the *Archbishop*. In case the latter reject the candidate, a new check is introduced, in the place of that of 1592, which allows the patron to retain the whole fruits of the benefice in his hands. This check is as follows:—

"That the Lords of the Privy Council, upon the parties' complaint of the refuse, and *no sufficient reason being given of the same*, shall direct letters of horning, charging the ordinary (the bishop) to do his duty in the receiving and admitting of such a person as the said patron has presented."

We cannot read this regulation without being struck *with its containing the precise line of proceeding which has been adopted in recent times against the Church*, requiring only the substitution of "*Court of Session*" for "*Privy Council*," and of "*Presbytery*" for "*Ordinary*." This is a point which must have painfully surprised the Scottish Church, and which, in the writer's opinion, is an ample excuse for just indignation. And let it be remarked, that that clause of an Act, notoriously hostile to the Presbyterian Church, does not go so far as the opponents of the Church have gone in the recent affair. For that clause related only to "*ministers once received and admitted to the function of the ministry, being then still undeprived;*" therefore it related to persons WHO WERE ALREADY ORDAINED,

and concerning whose admission to the ministerial office in general the Church had already decided.

And now that this Act, which permitted the patron to attain his object by means of letters of horning, and which never related to any persons but such as were already ordained, is altogether repealed; now that the Presbyterian constitution of the Church is recognised once for ever in the Revolution settlement, and with this constitution the abolition of the supremacy of the State in ecclesiastical affairs is established; now the Court of Session assumes the old authority of the Privy Council, and exercises it against Presbyteries and General Assemblies, and even *in respect of persons who have never been ordained*, and this momentous oversight of the difference between an unordained probationer and an ordained minister has been supported even by the House of Lords!

The Scottish Church, in the writer's opinion, has not only been justly conscious of her rights in the recent struggle, but she can justly maintain that these rights have been unquestioned during the last century and a-half, and that even the Act of Queen Anne, faithless and mischievous as the passing of it was, has not been a mortal blow to these rights. But, truly, she is not to be blamed for not having been able to endure the recent fundamental infringements of her constitutional sphere of jurisdiction. She is not to be blamed for not having been able to bring herself to grant that to the State in the year 1839, which King James himself did not dare to ask her to grant to the bishops, the creatures of his power! She is not to be blamed for considering the levity and decisiveness with which her claims to her rights have been termed hierarchical, presumptuous, monstrous, rebellious,—anything but soundness and matureness of judgment!

King James, it must be admitted, had in all his proceedings an eye to decorum and appearance of propriety. He always strove to acquire the consent (at any rate apparent) of the Church to his ecclesiastical measures. About the means of acquiring this he was, indeed, little scrupulous; and if corruption can be excused on the ground that men presented themselves who were open to corruption, we must admit that such men existed in that time in the Scottish Church, as in all other times; but his unfortunate son and successor, acting under the counsel of Laud, did away with all such restraint, and laid claim to regulate ecclesiastical affairs simply by virtue of his Royal authority, wisdom, and pleasure. In judging of our subject, love of plain truth demands that we look at the thing itself, and not at changing names given to it under changed circumstances. That which was at that time called "Royal authority, wisdom, and pleasure," and as such claimed the sovereign regulation of Church affairs, has now the name of "law of the land," proceeding in unconditional force from the Legislature and authoritatively interpreted by the "courts of law." But the Church of Christ justly maintains that she has received her essential laws and ordinances from a higher quarter than any Legislature or State whatever. An impartial consideration of those times, so stormy for the Scottish Church, teaches that this claim of supremacy over the Church by the State was a source of much more vexation to conscientious and powerful men in the Scottish Church than the Episcopal origin and Romanizing character of the Canon and Service Book, which was then to be introduced into Scotland. After all, Charles the First cannot be accused of having undervalued his adversary, the Kirk. He had made many concessions which he intimated to the celebrated General Assembly of 1638, by his Lord High Commissioner, the Marquis of

Hamilton, to be the ultimatum on the King's part. But these concessions all rested on the supposition of the King's supremacy over the Church, and his supreme jurisdiction in spiritual affairs, founded on this supremacy and exercised by means of organs responsible to the State, whatever name these organs may bear. It was on this account that Alexander Henderson, the Moderator, in the name of the Assembly, refused to accept the offers of the Royal ultimatum. Whoever reads the transactions of this General Assembly with attention cannot help remarking the wisdom, composedness, and integrity, with which the Church first ascertained the full extent of her statutory rights, and the clear-sightedness and decision with which she afterwards deliberated in all loyalty upon all Erastian and Prelatic infringements and innovations which were made during the previous forty years.

It is well known that the Lord High Commissioner left the Assembly after having declared in the King's name that it was dissolved. This was a great and decisive moment for the Scottish Church. Alexander Henderson appears like her guardian angel. The Assembly, in the name of its invisible King and Lord, declares itself constituted as representative of the Scottish Church and competent for all *spiritual* things, even without the presence of the State; this being, of course, under the provision that the control of all civil matters connected with its resolutions should belong unconditionally to the State. In this position it proceeded with order and dignity to business.

At the close of its session the General Assembly addressed a letter to the King, which is exceedingly instructive with regard to the position which the Church was obliged to assume against the unjust machinations through which she had been almost overthrown. This position she was justified in assuming under the Acts of 1567, 1581, and

1592. The question then was, as it was in the month of May (1843,) whether the Scottish Church of the Reformation with regard to the most important point of spiritual jurisdiction should stand or fall. It was then, as now, in the power of the State, either to respect the established rights of the Established Church of the land, or to have another establishment which should be more conformable to the views of the statesmen. The difference in position between the Kirk of those times and of to-day is only this, that the latter has been called on to testify to the purity of her convictions and of her moral resistance by the greatness of her sacrifices.

Alexander Henderson makes the following interesting conclusion to his eloquent reply to the Lord High Commissioner. After having dilated on the difference between civil and spiritual authority, on the separation of person in those exercising these authorities and on the sources, means, forms, and limits of jurisdiction of both, he continues:—"So, whatsoever is ours, we shall render it to his Majesty, even our lives, lands, liberties, and all; *but for it that is God's and the liberties of His house*, we do think, neither will his Majesty's piety suffer him to crave, neither may we grant them, even though he should crave it."

The General Assembly abolished all the foreign and dangerous elements which had been introduced into the Church by force or stratagem since 1592, and the Church again appeared in the pure Presbyterian form of 1592.

The question now was, whether or not this should be recognised as "*the Church of Scotland established by law.*" Providence decreed that she should not be thrown yet from her position of Establishment, for the Resolutions of the General Assembly of 1638 received the

Act 1640, c. 5. (Vol. v., p. 291 & 292.)

sanction of the Legislature in 1640, with repeal of all statutes to the contrary.

Hitherto, therefore, nothing can be brought forward in the statutes and standards of the Kirk, on which the recent attacks of the State against her independence of spiritual jurisdiction can be founded. The only question which now remains to be examined is, whether or not the Scottish Church has lost this position in the Revolution settlement. If it be found that the Act of Security has indeed guaranteed the same Scottish Church which was first recognised in 1567, was again recognised in 1592, and again in 1640, it will be clearly proved that in the recent struggle the Church has been right and the State in the wrong.

The view which the State took of the Church at that time is clearly and strikingly exhibited in the Act of Parliament of 1649, which has been considered in the third section of this work, and to which the writer requests his kind reader to recur.

Third Period.

From 1640 *till* 1690.

The transactions of the Westminster Assembly in respect to ecclesiastical jurisdiction, are of the greatest importance in order to understand the interpretations of the Scottish Church as to Church Policy. It is well known that the Presbyterians were opposed in this Assembly, partly by their so-called "Dissenting brethren," the Congregationalists; partly by those properly termed Erastians. By the former, chiefly in respect to the form of Church government, and to the relation between the Church of Christ as a whole, and the individual congregation; by the latter, in respect to the same question which

has arisen in our times, namely, the relative extent of jurisdiction of the ecclesiastical and civil power; by both parties in matters of Church discipline. The Presbyterian doctrine proved decidedly victorious in the Assembly; but the minority was comforted for their defeat in the consciousness that one party possessed a power in Parliament, the other in Cromwell's head, sword, and army, of which the display would certainly be much more cogent than the arguments of a debate. And indeed, the Parliament of England was not at all inclined to content itself with the mere placet, the right of inspection and protection of the Church then arising, and refused to ratify those Resolutions of the Westminster Assembly which treat of Church government and Church discipline; whilst, on the contrary, the Church and Parliament of Scotland recognised and adopted the whole laborious work of the Assembly with full approbation.

Thus in 1647 the Westminster Confession became a standard of the Scottish Church: and the writer requests once more to refer his kind reader to the most important Act of Parliament of 1649.

The Westminster Confession was expressly ratified by the Treaty of Union, and appended to this Treaty. Should this document be found to lend its support to the Free Church, the latter cannot be condemned for having given, in 1842, to her numerous pressing and imploring addresses to the State, the title of a "*Claim of right, declaration, and protest,*" etc.

It will be convenient to examine the Westminster Confession in connexion with the document by which it was ratified by the State at the Union, so that we may have together at the end of our research, the entire ground of right on which the Scottish Church has been based since

the Reformation, and on which she will rest all her future claims under the Union with England.

The abnormous episode under Cromwell, having left nothing remarkable behind it with regard to the subject of our inquiry, is to be passed over. After the Restoration the old struggle began again; and it may certainly be as well said of the Stuarts as of the dynasty to whom the saying was originally applied, that they neither forgot anything nor learned anything, even to the consummation of their well-deserved fate.

King Charles II. took oath at his coronation in Scotland, to honour and protect the Established Church of the land; he had signed the Solemn League and Covenant at his restoration, and soon afterwards promised, in a letter to the collective Presbyteries, "that he would protect and preserve the government of the Church of Scotland as settled by law."

Nevertheless incessant attempts were made in his reign, under a succession of corrupt High Commissioners, and through the obsequiousness of Parliament, to establish the Royal supremacy in ecclesiastical affairs, to overthrow Presbyterianism, and to introduce the Episcopal constitution of the Church; and this was attended by such cruelty, violence, and cunning, that all the deeds with which the Covenanters are charged, appear, if not justifiable or excusable, at least not much surprising.

Dr. Cook, alluding to this in his "History of the Scottish Church," says:—"In the face then of all, which a man of honour should have revered, he had restored prelacy and even rendered it more obnoxious than it had formerly been. It was thus associated with a breach of integrity in the Sovereign which would have degraded the

meanest of his people; and it appeared polluted by the contamination of an unprincipled monarch. This, however, might have proved, as it ought to have done, only momentary, but its effect was increased *from the polity not having been sanctioned by the authority of the Church;* it was, in fact, ushered in *by a mere exercise of the Royal prerogative*, and it hence carried with it the melancholy and heart-rending reflection to men glowing with the love of freedom, *that the struggles for their civil rights* had terminated in oppression."

In the year 1661, the intemperate Earl of Middleton was Lord High Commissioner, and imagined best to please his Royal master by pursuing the shortest course with the Church of Scotland. He therefore pressed through the so-called

Act Rescissory, 1661,

which annulled all statutory enactments since 1640, and thus swept away with one stroke all that was legally conceded to the Church under Charles I.

Act 1661, c. 126, 127. (Vol. vii., p. 86—88.) (Act rescinding and annulling the pretended Parliaments in the years 1640, 1641, etc.)

Act of 1662,

For the restoration and re-establishment of the ancient government of the Church by archbishops and bishops.

This Act begins with the declaration,—"The ordering and disposal of the external government and policy of the Church does properly belong unto his Majesty, as *an inherent right of the Crown,** *by virtue of his Royal prerogative and supremacy in causes ecclesiastical.*"

Act 1662, c. 3. (Vol. vii., p. 372—374.)

The Act then re-establishes the bishops in their estates, rights, and functions; revives and ratifies earlier statutes

* According to the altered circumstances of present times, it would read, "*as an inherent right of the supreme power of the State*," whose views are authoritatively interpreted by its supreme law courts.

in their favour, and renders of no effect those which are opposed to them. But here it is of the greatest importance to observe the *expressions* in which this is done, especially with reference to the Act of 1592, to which we shall always have to recur. It "casses and annuls all Acts of Parliament by which the *sole and only power and jurisdiction within this Church* does *stand in the* Church, and in the *general, provincial,* and *Presbyterial Assemblies* and *Kirk Sessions;* and all Acts of Parliament or Council which may be interpreted to have given any Church power, jurisdiction, or government to the office-bearers of the Church at their respective meetings, *other* than that which acknowledges a *dependence upon* and *subordination to the sovereign power of the King* as supreme, and which is to be regulated and authorized by the archbishops and bishops, who are to put order to all ecclesiastical matters and causes, and to *be accountable to his Majesty for their administration;* and particularly abolishes the Act of 1592."

Remarks on this Document.

1. By the "Rescissory Act," all Acts of Parliament since 1640 were annulled, and with them the respective obnoxious clauses of the Westminster Confession were disratified. But however sweeping the "Rescissory Act" might have been, it was equally unsatisfactory. Certain inconvenient earlier laws still remained in force, namely, the Act of 1592, with all those ratified in it, such as the Acts of 1567, 1581, etc. These were therefore also annulled in the above-mentioned document.

2. In justice to the State of those times, we must observe, that it had no hesitation in seeing and acknowledging that its proceedings against the Church could not be vindicated by a certain *interpretation,* but were founded on an uncompromising *abolition* of her documents; and

indeed, either this uncompromising abolition or a candid recognition of them, appears to the writer the only solid way of "removing doubts" which even now exist in Scotland, and threaten new secessions, individual and collective, in future times. The State of the present day has committed an error in supposing that the interpretation which the Free Church gives to the Statutes and Standards of the Kirk is an innovation, and is monstrous and absurd. In this error it has drawn public opinion with it, at least that of England. The State of those times understood the matter more clearly. It did not deny that it was the real meaning of the documents which legalized the claim of the Church of Scotland; that "*the sole and only power and jurisdiction within the Church*" was to "*stand in the Church*," and that the exercise of this power and jurisdiction was to stand "*in the General, Provincial, and Presbyterial Assemblies and Kirk Sessions;*" and that this power and jurisdiction was not to be exercised "*in dependence upon, and subordination to, the sovereign power of the King as supreme*," but by the office-bearers of the Church, in dependence on, and subordination to, the sovereign Lord and King Jesus Christ, according to the rules and ordinances of the Word of God. Now, the State of those times hated these powers in the Church, and made no secret of purposing to alter, by the enforcement of its views, the whole constitutional position of the Church to the State, and the whole constitutional organism of the former in itself. On this account it annuls, in our document, not only all Acts of Parliament, which according to its own acknowledgment establish the rights hitherto enjoyed by the Church, but also, "all Acts of Parliament and Council, *which might be interpreted to have given*," etc.

The State of to-day, on the contrary, has the intention

"to put an extinguisher," as a Noble Lord expresses it, on all such (supposed flagrant) presumption in the Church; but it takes the appearance of wishing to protect the Church against hierarchical fanatics contained in her, whilst in truth it has been disestablishing her, retaining an establishment which, though it may contain, as the author willingly admits, much that is good, is not the "Church of Scotland" constitutionally guaranteed a century and a-half since.

3. A corroboration is afforded to these remarks by the circumstance, that in the above-mentioned document the restored archbishops and bishops are declared, without any more definite limitation, "*to be accountable to his Majesty for their administration.*" The function of the bishops is defined similarly in general to what it is in the Black Acts of 1584, namely, "*to put order to all ecclesiastical matters and causes;*" but the additional provision, "*to be accountable for their administration to his Majesty,*" is here expressly introduced, in opposition to the principles of Scottish Presbyterianism. According to the privileges of the Kirk, the Church of Christ in Scotland was accountable, in all secular and civil things, to the civil magistrate; but in spiritual matters, only to her heavenly Lord; no earthly king nor council, no secular law-court, had any control over her. In this additional provision it is clearly to be seen, that although the State of those times had no affection towards the Church, it by no means misunderstood her.

It would be both unnecessary and tiresome to repeat here the details of the struggle between Church and State, which ended at the Revolution settlement. The recognition of the "*supremacy of the King over all persons and in all causes,*" in the Act of 1661, unconditionally ex-

pressed, and repeated in the Act of 1669 with dogmatical distinctness, and applied to ecclesiastical matters, was made a TEST, according to which ministers were admitted to office or deprived of it, and according to which proceedings were determined in the persecution of the Covenanters. It is well known that in England 2,000 Nonconforming clergymen were deposed from their places in *one* day; in Scotland, the proportionate larger number of about 400 were made the victims of their conscientiousness.

The Act of 1669

Act 1669, c. 2. (Vol. vii., p. 554.)

Declares:—"That his Majesty has the supreme authority and supremacy over all persons and in all causes *ecclesiastical* within this kingdom; and that by virtue thereof the ordering and disposal of the external government of the Church does properly belong to his Majesty and his successors, as an *inherent right to the Crown;* and that his Majesty and his successors may settle, enact, and emit such constitutions, Acts, and orders concerning the administration of the external government of the Church, and the persons employed in the same; and concerning all ecclesiastical meetings and matters to be proposed and determined therein, as they in their Royal wisdom shall think fit:" which constitutions and Acts, etc., "are to be observed and obeyed by all his Majesty's subjects."

The writer would here remark, that this Act of 1669 was the very *first* which was repealed in the Revolution settlement; and the reason of this was not, as is now sometimes asserted, because it invested the King with a power which was in future to rest solely with the *Legislature*, but because, as it is stated in the "*Articles of Grievances*, No. 2," "*it was inconsistent with the establishment of Church government now desired.*"

The establishment of Church government then desired

took place in a manner and to such an extent in the Revolution settlement, that the Church was satisfied with it, and it was ratified and solemnly guaranteed by the Act of Security at the union of the two kingdoms. Let us now examine that Act which, in the year 1690, after the Revolution, settled the ecclesiastical affairs of Scotland.

Act of 1690,

Ratifying the Confession of Faith and settling Presbyterian Church Government.

This Act, restoring the Presbyterian form of Church government, does this, not in the Erastian terms of the statutes of the Stuarts, which talk of "*conferring*" Church powers on the Church courts, and of "*constituting*" bishops and Royal Commissioners to put order to all ecclesiastical things, but it "*allows and declares*," "that the Church government be established in the hands of, and be exercised by, those Presbyterian ministers *who were outed* since the 1st of January, 1661, &c., and such ministers and elders only as they have admitted or received, or *shall hereafter admit or receive*."*

Again, it does not found its concessions, like the statutes of the Stuarts, on "*Royal wisdom or pleasure*," but, after the following preamble,—"Our sovereign Lord and Lady, the King and Queen's Majesties, and the three Estates of Parliament, considering it to be their bounden duty, after the great deliverance, that God has lately wrought for this *Church* and *kingdom*, in the first place to *settle* and *secure*

* There can be little doubt of whom these "ministers outed since the 1st of January, 1661," are the spiritual fathers, whether of those who at the recent disruption have remained in the Establishment, or of those who have been outed on the 18th of May, 1843, and who, with their people, constitute now the Free Church of Scotland.

therein the true Protestant religion according to the truth of God's Word, as it has of a long time been professed within this land,* as also the *Government of Christ's Church* within this nation, *agreeable to the Word of God*, and most conducive to the advancement of true piety and godliness, and the establishing of *peace* and *tranquillity* within the realm," &c.,—it proceeds to ratify all the Acts which have been passed in favour of the Church in earlier times, to grant her several civil rights and privileges, "to ratify and establish the *Confession of Faith* now read in their presence and voted and approved by them as the *public* and *avowed* confession *of this Church*,† containing the sum and substance of the doctrine of the Reformed Churches (*which Confession of Faith is subjoined to this present Act*), as also they do *establish*, *ratify*, and *confirm* the Presbyterian Church government and discipline, that is to say, the government of the Church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, ratified and established by the 114th Act of James VI., Parl. 12, anno 1592, intituled, 'Ratification of the Liberty

* "A singular way certainly for the Legislature, if it regarded the Church of Scotland as a '*Corporation*,' to be subjected to the ordinary civil courts, thus to speak of the signal deliverance which God has wrought for this '*Church* AND *kingdom*,' evidently treating '*this Church*' as something *distinct* from, and *co-ordinate* with, '*this kingdom*;' nay, actually giving the *precedence* to the Church, and speaking not of '*this kingdom and Church*,' but of 'this Church and kingdom,' a precedence yielded to the Church, not certainly on account of any earthly pre-eminence which belongs to her,—for that, as well as all earthly power she utterly disclaims,—but yielded on account of that sacred character, function, and government, which the Legislature was in the act of recognising to be inherent in her as a spiritual body, distinct and separate from the State itself." (*John Hamilton*, "*The Present Position*," *etc.*, page 32.)

† Not "of this State."

of the true Kirk,' &c., and thereafter received by *the general consent of the nation* to be the *only* government of Christ's Church within this realm, reviving, renewing, and confirming the foresaid Act of Parliament in the whole heads thereof, except that part of it *relating to patronages, which is hereafter to be taken into consideration,** and rescinding, annulling, and making void the Acts following," &c., (namely, the Acts restoring prelacy and Erastian arrangements),—it proceeds then to confer on the Church the regulation of several temporal matters connected with her interests, which, as the Act directs, she is to order "according to the custom and practice of Presbyterian government throughout the whole kingdom and several parts thereof," &c.

Remarks on this Act.

1. The writer does not see how this Act could be worded so as more clearly to prove the justness and constitutionality of the cause of the Free Church. To this document, however, which contains in itself the Acts of 1567, 1581, 1592, &c., the public faith of the Treaty of Union is pledged. Now, although the Act of Queen Anne has been a crying violation of this faith, and an open infringement of the Act of Security, it only altered a single, though important point,—namely, patronage,—but it did not change the constitutional relation of the Church to the State and her independent jurisdiction in spiritual matters; and if the principle of Non-intrusion, in the sense of the Free Church, were a debateable point (although, the writer

* This passage does not restrict the Act of 1592, but, on the contrary, proposes to reserve for future consideration an *extension of rights.* It is well known that the result of this "*consideration of that part of the Act relating to patronages,*" has been, that *patronage was altogether abolished.*

thinks, that she is in the right on this point), nevertheless, every impartial person, who has paid attention to the statutes of the Church, will admit, that there can be no doubt about the legality of the principle of her spiritual independence.

2. Relatively, therefore, that is to say, in respect to the before-mentioned documents, on which the treaty between the Scottish Church and the State rests (for her established connexion with the State was, indeed, a matter of *mutual* agreement and faith), the State has done wrong and the Church has suffered wrong. In the next place, it is the civil courts that have committed an injustice by exceeding their powers, but the Legislature has not given to understand that the proceedings of the law courts were not those of the State itself, on the contrary; after much that is irretrievable was lost by a passive line of proceeding, the Church of Scotland Benefices Bill appeared. This is so far from redressing, in the name of the State, the unwarrantable infringements of the privileges of the Church of Scotland, that it does not take any notice of the melancholy effect of these infringements, namely, the rise of the Free Church; and instead of calling back peace and tranquillity, and of restoring a Church which reigns in the hearts of the people, and not merely in the dead letter of the law, it leaves, more closely examined, all the essential matters in dispute just in the same state in which they were before. The Legislature can, of course, do no legal wrong, since all that it does constitutes what is to be held legally right. If the constitutional and legitimate privileges of the Scottish Church appeared no longer compatible with the rights of the State over one of its hitherto most valued and most effective Church Establishments, it was perfectly in the power of the Legislature to say to the Church, "I withdraw your privileges, and propose you

new conditions, to which you must consent if you would continue to enjoy the advantages of an Establishment," nothing could be said against this on the score of mere power, and it would have been well had the State declared in words what were the principles of its deeds. But if the Church considered herself as conscientiously unable to accede to these propositions, and to surrender a spiritual independence which she alone was possessed of in all Protestant Christendom, a great moral wrong has been done to her,—a wrong continually increasing, by lasting prejudice and convenient ignorance of the true state of the question, in branding her as the breaker of the law and the disturber of the peace.

Let us now conclude this treatise with a brief examination of the great Standard of the Kirk,

The Confession of Faith.

The writer will give at once the authoritative declarations of this most important document, together with the able observations made on it by one of the most intelligent and moderate defenders of the Church of his fathers (John Hamilton, Esq., Advocate. "The present Position of the Church of Scotland," 3d ed., 1840, p. 29.) He says—

"The Confession of Faith, as a matter of course, is mainly occupied with points of doctrine and religious belief; but the nature of the Church and of its government, while they are set down in the succinct terms suited to such a treatise, are expressed at the same time so absolutely as to admit of no mistake."

In chapter twenty-five it is stated, "*There is no other head of the Church but the Lord Jesus Christ.*"*

* *Remark of the Author.*—In relation to this principle, it is said, "Nobody denies this: but this does not prevent that under Christ, as Head of the Church, there may be an earthly head or governor of her

The thirtieth chapter devotes its first and leading section to the following most explicit announcement:—

"*The Lord Jesus, as King and Head of his Church, has therein appointed a government in the hand of Church officers, distinct from the civil magistrate.*"

The means by which the Church officers are to enforce the authority of their government are entirely of a spiritual nature, and are stated in these terms—"*The officers of the Church are to proceed by admonition, suspension from the Sacrament of the Lord's Supper for a season, and by excommunication from the Church,*" the last being the *highest* penalty the Church can inflict; after that the parties are freed absolutely from her government and control.

The thirty-first chapter states, that, "*for the better government and further edification of the Church, there ought to be such assemblies as are commonly called Synods or Councils.*"

The Confession does not descend to any particulars respecting the constitution of these assemblies, whether supreme or subordinate, but it distinctly describes their

too, just as the principle that God is the father of all men does not combat the care and government of an earthly father." But in this the principle is not taken in the dogmatical meaning in which Presbyterianism, or let us rather say Protestantism, understands it. The *position* in the principle is to be deduced from the *opposition* which is implied in it. The principle means that there can and shall be no earthly head over the Church, whether Pope, or prince, or clergy, with autocratic authority and powers in spiritual matters in contradistinction to a *passive laity*, but that the Church shall govern herself, under Christ, according to God's Word by means of a body of rulers, who are not immediate viceregents and divinely-appointed representatives of Christ on earth, but representatives of the Church of Christ on earth. Christ only confers power on them *through means of the Church as a whole*, and *the Church*, comprehending both the governing and governed, stands over both.

duties, both in regard to *ecclesiastical* and *civil* matters. In respect of the former: "*It belongeth to Synods and Councils,* MINISTERIALLY *to determine controversies of faith and cases of conscience;* TO SET DOWN RULES AND DIRECTIONS FOR THE BETTER ORDERING OF THE *public worship of God and* GOVERNMENT OF HIS CHURCH; *to receive complaints* IN CASES OF MALADMINISTRATION, *and authoritatively to determine the same, which decrees and determinations, if consonant to the Word of God, are to be received with reverence and submission not only for their agreement with the word, but also for the power whereby they are made,* AS BEING AN ORDINANCE OF GOD APPOINTED THEREUNTO IN HIS WORD."

And with respect to civil affairs, the statement is: "*Synods and Councils are to handle and conclude* NOTHING BUT THAT WHICH IS ECCLESIASTICAL, *and are not to intermeddle with* CIVIL *affairs which concern the commonwealth, unless by way of humble petition in cases extraordinary, or by way of advice for satisfaction of conscience, if they be thereunto required by a civil magistrate.*"

And, in regard to the "*civil magistrate,*" it is stated, chapter twenty-three, "*God, the supreme Lord and King of all the world, hath ordained civil magistrates to be under him over the people, for his own glory and the public good, and to this end* HAS ARMED THEM WITH THE POWER OF THE SWORD *for the defence and encouragement of them that are good, and for the punishment of evil doers.*"

And after stating that "*the civil magistrate* MAY NOT ASSUME *to himself the administration of the word and sacraments, or* THE POWER OF THE KEYS OF THE KINGDOM OF HEAVEN," it proceeds in terms which will require a single word of observation: "*Yet he has authority, and it is his duty to take order that unity and peace be preserved in the Church, that the truth of God be kept pure and entire, that all*

blasphemies and heresies be suppressed, all corruptions and abuses in worship and discipline prevented or reformed, and all the ordinances of God duly settled, administered, and observed, for the better effecting whereof he has power to call synods, to be present at them, and to provide that whatsoever is transacted in them BE ACCORDING TO THE MIND OF GOD."

Now, upon the duty and authority which are here ascribed to the civil magistrate, I content myself with making two remarks, viz.—

First, that as this authority of the civil magistrate consists in "*taking order*," or "*providing*" that certain sacred matters be done and attended to, *not by himself* (for he is immediately before expressly debarred from performing them), but *by the Church*; and as, in so taking order or providing, he is to proceed not according to any human law or maxim whatsoever, but "*according to the mind of God*," the duty here assigned to him is of a very *peculiar* and *qualified* character.

Secondly, that whatever may be the nature of the duty so assigned to the magistrate, it cannot *by possibility derogate anything from the power and duty of the Church* to exercise that government which by the Lord Jesus Christ himself, the sole Head and King of the Church, has been *committed to its officers as distinguished from all civil magistrates*; and that the Church therefore can never be absolved from the necessity of administering that government which constitutes its own assigned and peculiar province *upon its own most solemn and undivided responsibility.*

The writer of the foregoing treatise begs to offer, by way of conclusion, a few words in respect to the Scottish Church question, viewed in the light of the above quoted passages of that celebrated standard.

According to Presbyterian principles and views, the ministers of the Church are not merely preachers of the word and administrators of the sacraments, but as members of the different Church courts, all of them are taking part also in the *government of the Church*. Now, the question is simply this, Does the admission or rejection of individuals who are about to take part in the government of the Church form itself a part of Church government, or not? The writer thinks nobody will deny it does. Well, then, it follows necessarily that the Church, having the acknowledged right "*to set down rules and directions for the better ordering of the government of God's Church*," had the right to pass the Veto Act, since this act is nothing else than a rule and direction for the Presbyteries for the better ordering of the government of the Church in that very important point of admission or non-admission to the ministry.

Furthermore, it is a part of the question, whether the proceedings of the Presbytery of Auchterarder against Mr. Young were "*a case of mal-administration*" or not? If not, Mr. Young had no reason to complain; but if it were, then his complaint was to be authoritatively determined on by the Synod, and finally by the General Assembly; and there the affair should have stopped; and the proceedings of the Court of Session, which went to annul the lawful decisions of the Church courts in the Auchterarder case, Strathbogie case, &c., appear rather as cases of mal-administration in its own province, which ought to have been corrected, and not confirmed by the Court of Appeal.

The Scottish Church has therefore perfect right to complain of great injustice on the part of the State, inasmuch as the latter granted her no hearing, when she solemnly represented in her claim of right, as early as May, 1842, the following encroachments of the Court of Session on her

own jurisdiction, in violation of the Constitution of the country:—

"The Court of Session have invaded the jurisdiction of the courts of this Church—

"1. By interdicting Presbyteries of the Church from admitting to a pastoral charge, when about to be done irrespective of the civil benefice attached thereto, or even where there was no benefice, no right of patronage, no stipend, no manse or glebe, and no place of worship, or any patrimonial right, connected therewith. 1st Lethendy case. Stewarton case.

"2. By issuing a decree requiring and ordaining a Church court to take on trial and admit to the office of the holy ministry, in a particular charge, a probationer or unordained candidate for the ministry, and to intrude him also on the congregation contrary to the will of the people; both in this and in the cases first mentioned, invading the Church's exclusive jurisdiction in the admission of ministers, the preaching of the Word, and administration of sacraments, recognised by statute to have been 'given by God' directly to the Church, and to be beyond the limits of the secular jurisdiction. Marnoch case.

"3. By prohibiting the communicants of the Church from intimating their dissent from a Call proposed to be given to a candidate for the ministry to become their pastor. Daviot case.

"4. By granting interdict against the establishment of additional ministers to meet the wants of an increasing population, as uninterruptedly practised from the Reformation to this day; against constituting a new Kirk Session in a parish to exercise discipline; and against innovating on its existing state, 'as regards pastoral superintendence, its Kirk Session, and jurisdiction and discipline thereto belonging.' Stewarton case.

"5. By interdicting the preaching of the Gospel and administration of ordinances, throughout a whole district, Strathbogie case.

by any minister of the Church, under authority of the Church courts; thus assuming to themselves the regulation of the 'preaching of the Word' and 'administration of the sacraments,' and at the same time invading the privilege, common to all the subjects of the realm, of having freedom to worship God according to their consciences, and under the guidance of the ministers of the communion to which they belong.

2d Auchterarder case.

"6. By holding the members of inferior Church judicatories liable in damages for refusing to break their ordination vows and oaths, (sworn by them in compliance with the requirements of the statutes of the realm, and, in particular, of the Act of Security embodied in the Treaty of Union,) by disobeying and setting at defiance the sentences, in matters spiritual and ecclesiastical, of their superior Church judicatories, to which, by the constitution of the Church and country, they are, in such matters, subordinate and subject, and which, by their said vows and oaths, they stand pledged to obey.

Culsamond case.

"7. By interdicting the execution of the sentence of a Church judicatory, prohibiting a minister from preaching or administering ordinances within a particular parish, pending the discussion of a cause in the Church courts as to the validity of his settlement therein.

Cambusnethan case.

"8. By interdicting the General Assembly and inferior Church judicatories from inflicting Church censures; as in one case, where interdict was granted against the pronouncing of sentence of deposition upon a minister found guilty of theft, by a judgment acquiesced in by himself; in another, where a Presbytery was interdicted from proceeding in the trial of a minister accused of fraud and swindling; and in a third, where the Presbytery was interdicted from proceeding with a libel against a licentiate for drunkenness, obscenity, and profane swearing.

Stranraer case.

4th Lethendy case.

"9. By suspending Church censures, inflicted by the Church judicatories in the exercise of discipline, (which, by special statute, all 'judges and officers of justice' are ordered 'to give due assistance' for making 'to be obeyed or otherwise effectual,') and so reponing ministers suspended from their office to the power of preaching and administering ordinances; thus assuming to themselves the 'power of the keys.' 1st and 2d Strathbogie cases.

"10. By interdicting the execution of a sentence of deposition from the office of the holy ministry, pronounced by the General Assembly of the Church; thereby also usurping the 'power of the keys,' and supporting deposed ministers in the exercise of ministerial functions, which is declared by special statute to be a 'high contempt of the authority of the Church and of the laws of the kingdom establishing the same.' 3d Strathbogie case.

"11. By assuming to judge of the right of individuals elected members of the General Assembly, to sit therein, and interdicting them from taking their seats; thus interfering with the constitution of the supreme court of the Church, and violating her freedom in the holding General Assemblies secured to her by statute. 5th Strathbogie case.

"12. By, in the greater number of the instances above referred to, requiring the inferior judicatories of the Church to disobey the sentences, in matters spiritual and ecclesiastical, of the superior judicatories, to which, by the constitution in Church and State, they are subordinate and subject, and which, in compliance with the provisions of the statutes of the realm, their members have solemnly sworn to obey; thus subverting 'the government of the Church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies,' settled by statute and the Treaty of Union as 'the only government of the Church within the kingdom of Scotland.'"

The Church of Scotland has been constrained, through the persisting refusal of her rightful claims, to withdraw from the position of an Establishment in the month of May of this year (1843). She has perfect right to lay all the unhappy consequences of this event on the conscience of her opponents; for she could not have acted otherwise than she did without committing a great dereliction of duty. As matters stand, it is her opponents who have committed an oppressive fault. The *entire* mistaking of the true position of the affair is evidenced even in the judgment passed on her final truly glorious, though tragical step; for it has been asked of her to continue an honest and conscientious opposition *in* the Assembly, but not to leave it and thereby consummate the present lamentable disruption. The truth is, that under the circumstances in which it was placed, the General Assembly of the Establishment could not be the General Assembly of the "Kirk of Scotland," and that the Seceders felt the obligation *of keeping their cause pure*. The grounds of Secession are quite satisfactorily given in the "Act of Protest," with which they effected, on the 18th May, 1843, their very peaceful and orderly dissolution from the Church of the State, and saw the Church of their fathers once more in the same position in which, as history proves, she had been placed several times before, through an hostility which does not scruple to set aside established concessions and to violate solemnly granted rights.

In conclusion, the writer would remark, that the question relating to the so-called "*Quoad sacra* ministers," was decided by the Court of Session against the Church, quite consistently, it is true, not with several previous decisions connected with this question, but with the views of Church jurisdiction with which that court had set out in the Auchterarder case, but just as unwarrantably as in this.

This decision necessarily extended the difference of principle even to the examination of the roll of the House of Assembly itself. Thus, strictly speaking, the General Assembly of this year (1843) being unable to constitute itself, a split was rendered inevitable, and, as matters stand, it seems to the writer rather promising, with respect to a future settlement, so very desirable, that for the present the two opposite parties separated from each other upon their own antagonistic principles.

The Free Church claims the right of styling herself the Church of Scotland; and this is derided, in many quarters of the Establishment, with scorn and contumely. The unhappy question has now arisen whether the former or the latter is to become the Church of the nation. In the opinion of the writer, futurity will declare in favour of the Free Church; * and either the injustice which has been committed will be redressed, or the present Establishment of Scotland must gradually lose its effectiveness and the respect of the nation, an event which cannot but be accompanied by the most disastrous consequences towards all the relations of the country.

* During the writer's visit to Edinburgh in the month of May, 1843, he witnessed the first historical verification of this. The deputations from the Presbyterian bodies of America, Ireland, Holland, and England, together with those from the bodies of the earlier Scottish Seceders, that were deputed to the then undivided General Assembly had, at the disruption of the Assembly, to decide, where they should find the representatives of the Church of Scotland. But all of them, without a moment's hesitation, passed St. Andrew's Church, and went to Cannon-mill Hall, to address what they deemed the true General Assembly of the Kirk.

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